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Ontario Reports Election Cases
Hodgins' election cases I

64

REPORTS

OF THE

DECISIONS OF THE JUDGES

FOR THE TRIAL OF

ELECTION PETITIONS

IN ONTARIO,

RELATING TO ELECTIONS TO THE

LEGISLATIVE ASSEMBLY OF ONTARIO,

1871-5-9;

~~1884-1891~~

AND TO THE

HOUSE OF COMMONS OF CANADA,

1874-8.

BY

THOMAS HODGINS, Q.C.

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REPORTS
OF
ELECTION CASES.

PROVINCIAL ELECTIONS, 1871.

PRESCOTT.

BEFORE CHIEF JUSTICE RICHARDS.

L'ORIGINAL, 20th to 23rd June, 1871.

JAMES STEWART MCKENZIE *et al*, *Petitioners*, v. GEORGE
WELLESLEY HAMILTON, *Respondent*.

Respondent's right to impeach Petitioner's qualification—Alienage—Voter in respect of wife's estate.—Notarial copy of Assignment in Insolvency, C.S.C., c. 80, s. 2.—Extensive Bribery by Agents—Calling upon parties guilty of Corrupt Practices to appear.

The respondent attacked the qualification of one of the petitioners on the grounds that he was an alien, and that he had no property qualification, having made an assignment in insolvency before the election. The learned Judge admitted the evidence, but

Held, (1) That the evidence as to petitioner having lived in the United States without showing that his parents were American citizens, was not sufficient to establish the charge of alienage. (2) That the Election Act of 1868, by the term "owner," gives to a husband whose wife has an estate for life or a greater estate, the right to vote in respect of his wife's property; and that the petitioner having that qualification, and being in possession of his wife's estate, was held entitled to petition.

Held, further, that a notarial copy of an assignment in insolvency may be received as evidence of such assignment under C.S.C., c. 80, s. 2.

The petitioners having given evidence of corrupt practices,

Held, (1) That the election was void for bribery by agents. (2) That corrupt practices extensively prevailed at this election.

Quere—Whether the Judge presiding at the trial should not direct notice to be given to the parties who, from the evidence, were apparently guilty of corrupt practices, so that the Judge might decide upon their liability to disqualification, and report them under the statute.

The petition contained the usual allegations of bribery, etc., and that illegal votes had been received, and claimed the seat for the defeated candidate, Mr. James Boyd. The majority for the respondent was 134.

Mr. Bethune and Mr. J. K. Kerr, for petitioners.

Mr. J. Hillyard Cameron, Q.C., for respondent.

Counsel for the respondent proposed to call witnesses to prove that the petitioners had no right to vote. Counsel for the petitioners contended, 1st, That the objection was a preliminary one, and should have been taken before a Judge, or the Court, and could not be taken now : and 2nd, That the petitioners had obtained an order for particulars against the respondent, and the objection had been waived. *Youghall case* (21 L. T. N. S., 306, 308). (a)

The CHIEF JUSTICE said he would not preclude the party from raising this objection now, but would reserve it if necessary.

Evidence was then given to show that the petitioner, J. H. Cleveland, had stated that he "had lived at Fort Covington," that he "had come from Fort Covington," in the United States. The Clerk of the Peace proved that no affidavits for the naturalization of the petitioner had been filed in his office.

Counsel for the respondent then proposed to put in a notarial copy of an assignment in insolvency, made by the same petitioner on the 10th July, 1867, to John White, of Montreal, official assignee.

Counsel for the petitioners objected that the assignment is not provable by a notarial copy, and that express provision was made in the Insolvent Acts of 1864 and 1869, for proving it.

The CHIEF JUSTICE, under C.S.C., c. 80, s. 2, admitted the notarial copy of the assignment.

Evidence was then given that petitioner's father, by will, dated 25th June, 1861, devised certain real estate to the petitioner and his wife. The property was assessed in petitioner's name for \$600.

Mr. Bethune contended that there was no evidence that the petitioner was an alien ; that as to the qualification, the will gave an estate by entireties. In any event, the petitioner's wife retained one half of the estate, and the

(a) See *South Huron case* (D.), 29 C. P., 301 ; s. p. *Dufferin case* (O.), 4 App. R., 420.

husband would be entitled to vote on her qualification. As occupant, he would have a right to vote: *Rogers on Elections* (11th Ed.), 9, 32.

Mr. Cameron contended that the effect of the will was that both parties were seized in entirety. The petitioner is not entitled to vote as occupant, for he is not an occupant to his own use and benefit, but merely for the benefit of his wife: *Watkins on Conveyancing*, 170.

RICHARDS, C. J.—As to the first ground of objection, I do not think the respondent has gone far enough. The petitioner is said to be here, and can be called. It is not shown that the parents were American citizens, or were born before 1783, and resided in the United States since. There is nothing against the presumption that they may have been natural born subjects, and the father devises this very property. But if it becomes necessary to consider the question as affecting the result, I will reserve it as a point of law for the consideration of the Court, whether the evidence is such as to justify me in finding the petitioner an alien or not.

As to the interest in the estate of his wife after the petitioner had assigned the interest devised to him under the will, I think the wife has the estate yet, notwithstanding the assignment by the husband. I think that the Elections Act of 1868, by the term "owner" means to give the right to vote to the husband whose wife has an estate for life, or a greater estate in the land; and that when in possession of such an estate he is proprietor in right of his wife. Here the land is assessed for \$600, and the wife's one-half share will be worth \$300, more than sufficient to qualify the husband. If it becomes necessary, I will reserve this question of qualification in right of the wife's estate, for the opinion of the Court.

Evidence was then given proving bribery and treating by agents of the respondent. The evidence material to the issue was as follows:

Walter Shane proved that he had received \$40 from James H. Milloy and \$60 from Col. Higginson, of which

he paid \$2 to Daniel Harrigan for the use of his team in taking voters to the poll on polling day; \$3 to John Franklin for a similar service; also some money to Charles Quesnel, a voter: "I gave it to him at his own place; I just gave it to him; it was not for voting;" also to Michael Shane \$15, because he brought two voters from the shanties; also \$3 to Moses: "Moses voted for Mr. Hamilton. It was after the election I made him a present of \$3. It was not for having voted; it was just for having gone up. I thought he had voted. I did give it to him just to pay his way. I laid out the rest of the money several ways I know about, and spent it. I did not give it to any one else.

Cross-examined: "The balance I have kept; no one ever asked me to give it back, nor have I ever asked any one to take it back. I did vote."

James H. Milloy proved that he was on the respondent's committee, and canvassed with him; that he received \$40 from the Hon. John Hamilton to hire men in place of certain voters who were in the shanties so that such voters might come to the election and vote; that he handed the money to Walter Shane; that he received further sums amounting to \$400 or \$500 from Col. Higginson, in the committee, and kept no record of it. "It was handed to me without any instructions, and it was never counted. I was to use the money. No one gave me instructions how to lay out that money. I consider the money was handed to me to spend at the election. I gave it to parties. I gave Mr. Allan J. Grant \$50. I told him he was to go and electioneer; left it discretionary with him to use as he thought best. I gave \$50 to the Rev. Mr. Phillips of the R. C. Church on the morning of the nomination; I felt assured he would make good use of it; it's usual to be liberal with the clergy at these times. I gave \$40 or \$50 to Mr. Leanch. He voted for Mr. Hamilton. I handed him the money; I believe I said to him that was to pay his travelling expenses, or something of that kind, for election purposes. I suppose we understood each other.

I gave Mr. Linden money. He is a voter who voted for Mr. Hamilton. I gave him \$15; did not tell him what it was for. It was after he voted he asked me for money; he said he had been at some expense. I knew he had, and gave him the money. I gave Mr. Peter Gallagher at a meeting of our committee \$100. He did not ask me for the money; I supposed he would promote the election with it. Mr. Gallagher voted for Mr. Hamilton, I believe. Mr. Bradley got some, say \$25. He said there were only \$15; I thought \$25. Mr. Higginson handed it to me to hand to him, no doubt to promote the election. Terence O'Boyle got, I think, \$25; I handed it to him; Col. Higginson handed it to me. I think all the parties understood what they were to do with it. I believe Mr. Patrick McDonald got \$20 or \$25 of the same, and small sums of between \$15 and \$20 paid out to other parties. I spent the rest in treating and in paying travelling expenses. I treated at Caledonia Springs' meeting with part of the election expenses."

After an adjournment, Counsel for the respondent stated that, after the evidence given yesterday, he considered a sufficient case had been made to avoid the election. The respondent in his examination prior to the adjournment denied that any money in relation to the election was expended with his knowledge and consent.

Counsel for the petitioners stated they did not wish to examine the respondent further. The end which they wished to attain was the setting aside of the election, and they had no wish to proceed with the matter further.

RICHARDS, C. J.—I determine the election was void. I determine that no corrupt practices have been proved to have been committed by or with the knowledge and consent of either of the candidates at such election. I shall certify that there is reason to believe that corrupt practices have extensively prevailed at the election to which the petition relates.

I have some doubt whether I ought not to direct that notice be given to the parties under the statute, who are apparently, from the evidence, guilty of corrupt practices, that they may have an opportunity of being heard, so that I may decide and report to the Speaker on that subject under subs. *b.* of section 17 of the Controverted Elections Act of 1871. The Act itself having been passed so recently before the elections, the practice under the Act being new, the Judges being much pressed for time in carrying out the Act, the delay which must ensue if these proceedings are adjourned to give the proper notice to the parties who were apparently the most active in the corrupt acts, the inconvenience to all parties concerned, and the fact that the parties who are guilty may still be prosecuted for penalties, induce me to consent to the matter not being proceeded with further, for the purpose of making the parties liable to the penalties under the statute of 1871.

Petitioners are entitled to their costs, having reference to the cases of voters in which they failed to make out a case. (*a.*) (5 *Journal Legis. Assem.*, 1871-2, p. 5).

CARLETON.

BEFORE MR. VICE-CHANCELLOR MOWAT.

OTTAWA, 16th and 17th June, 1871.

ROBERT LYON, *Petitioner*, v. GEORGE W. MONK, *Respondent*.

Bribery by an Agent—Admission of Counsel.

The admission of Counsel in open Court,—that the giving of \$2 to a voter by an agent of the respondent, after such voter had voted, such voter admitting that he did not know why the \$2 was given to him, was bribery,—acted upon, and the election avoided.

The petition contained the usual allegations of bribery, &c., and claimed the seat for the petitioner on a scrutiny. The votes at the election were: For respondent, 822; for petitioner, 812. Majority for the respondent, 10.

(*a.*) See as to the taxation of costs in this case, 32 Q. B., 303.

Mr. J. Hillyard Cameron, Q.C., for respondent.

Mr. R. A. Harrison, Q.C., for petitioner.

Particulars of charges of personal bribery against the petitioner were filed; but after the examination of one witness, they were abandoned.

The evidence affecting the election was as follows:—

Alexander Kinch: I know Crawford Corbett; he lives near me, two miles from me. I am a farmer; have a rented farm. Crawford Corbett gave me \$2 after I had voted; I don't know why he gave me the \$2; I did not ask him; he owed me nothing.

The Counsel for the respondent admitted this vote to be bad.

Five other votes for respondent were admitted to be bad.

Mr. Harrison, for petitioner, then abandoned the scrutiny and the claim to the seat.

Mr. Cameron, for respondent, consented, and that the election should be declared void. He further admitted that the voter *Kinch*, whose name was struck off for bribery, was bribed by the agent of the sitting member, and without his knowledge or consent.

The VICE-CHANCELLOR on the foregoing evidence and on the admission of Counsel, then declared the election void; and made the following special report:

“That the votes of *John Craig*, and *Alexander Kinch*, who voted at the said election, were struck off by me, on the scrutiny on the trial, on the ground of bribery; the evidence in each case being that of the voter himself given at the trial.

“That the persons who paid the money to the said voters were not produced as witnesses at the said trial; and there was no proof before me that they had the opportunity of being heard as required by the 49th section of the Act.”

No costs to either party. (5 *Journal Legis. Assem.*, 1871-2, p. 6.)

GLENGARRY.

BEFORE CHIEF JUSTICE HAGARTY.

CORNWALL, 22nd and 23rd June, 1871.

RODERICK MCLENNAN *et al*, Petitioners, v. JAMES CRAIG,
Respondent.

Treating at Meetings of Electors—Illegal and Prohibited Acts—Bribery—Gift—Excessive payments—32 Vict., cap. 21, secs. 61, 65 and 67—Costs.

The respondent who was then representing the county in the Legislature, on two several occasions at the close of public meetings of electors called by him to explain his conduct as such member, treated all present to liquor at taverns. He had not at the time made up his mind to be a candidate at the then coming election, but told the electors that "if they gave him their support he would expect it."

Held, under the circumstances, that such treating was not done with a corrupt intent.

Quære—Whether such treating was in any case a corrupt practice, under sec. 61, of 32 Vict., cap. 21, or other than an illegal act which subjected the party to a penalty of \$100 under sec. 65—the statute pointedly omitting all mention of treating.

Where a charge of a corrupt intent in treating is made, the evidence must satisfy the Judge, beyond reasonable doubt, that the treating was intended directly to influence the election, and to produce an effect upon the electors, and was so done with a corrupt intent.

The respondent after announcing himself as a candidate, gave \$10 in two \$5 bills to a child of a voter, then three or four years old, which had been named after him. He had two years previously intimated that he would make the child a present.

Held, that the gift, under such circumstances, was not bribery.

The respondent while canvassing had refreshment for his man and two horses at a tavern for part of a day and a night, for which he paid the tavern-keeper \$5, and next day \$5 more, in all \$10, without asking for a bill. The bill would have amounted to about \$3. The respondent stated that the tavern-keeper was an old friend of his, and was just starting in business, and that he thought it right to pay him as it were a compliment on his first visit to his tavern, and that he believed he would have done the same thing if it was not election time.

Held, that being an isolated case in an election contest, free from profuse expenditure, and this being a quasi-criminal trial, involving grievous results to the respondent if found a corrupt practice, such payment was not—after the explanations of the respondent—an act of bribery.

The petition was dismissed, but owing to the unwise and imprudent acts of the respondent, he was allowed only one half of the taxable costs.

The petition contained the usual allegations as to corrupt practices, etc.; but did not claim the seat. The candidates at the election were James Craig, the respondent, who was elected, and James Maclellan.

Mr. Maclellan, Mr. Bethune, and Mr. Wilson, for petitioners.

Mr. J. Hillyard Cameron, Q.C., and Mr. D. B. McLennan, for respondent.

The petitioners relied upon the cases referred to in the following evidence :

James Craig, respondent: I was a candidate at the last election, and was successful. I was rather unwilling to stand. The meetings held were to offer explanations of my conduct. The first meeting was at Somerstown. At that time I did not know the election was coming on. I had not made up my mind to be a candidate. Made up my mind at Alexandria to become a candidate. At Somerstown I was the only one that spoke. The meeting was in a building or ball-room in connection with the hotel. I told the people that if they gave me their support I would expect it, and if not they might do otherwise. After I spoke I told the people to go into Somer's bar and have something to drink ; this was to be at my expense. There were from 50 to 100 there ; I can't be sure. Some went in, so did I ; I partook of the refreshment at the bar with them. My invitation was general ; perhaps 20 or 30 went in to drink. I only paid for one treat ; I paid \$5 in all to the proprietor. I left, leaving several there. At Williamstown the meetings were in a public hall. I spoke ; no one else after I spoke. I said, as they all had been out late, and as they had behaved well, to go to their respective hotels and have some refreshment, and I would call round in the morning. All that was understood was to have a glass of liquor as at Somerstown. Three hotels were there, kept by Thomas, Angus, and John Macdonald, respectively. I think, not sure, these three men were my supporters. Some of them went to the hotels ; I went to all three ; they got liquor there ; I talked with some in the bars ; I paid for this. I paid from \$3 to \$4 to each of the three hotels for this ; I paid it next day ; paid none since then. I paid them what they said was the cost ; the whole did not exceed \$12. At the close of the Alexandria

meeting I gave them a like invitation. The meeting was in a hall, part of McPhee's hotel. The Attorney-General happened to be there, and he told me it was contrary to law ; and then I said, if so, I would not treat, and I did not. He said it might cost me my election. I gave John Tobin \$10 two or three weeks before the election. I stopped part of two days, and left my man and horses. It was a very dirty time. I gave him \$5, saying I was sorry I had dirtied his house. Next day I gave him \$5 more. He asked me should he treat the people there ; I told him no, to make them pay for their drinks. I did not eat or sleep there ; I slept with a nephew. My man must have taken two or three meals, and stayed a night. I had two horses ; they were there part of a day and a night, and got three or four meals. I understood I was paying for self, man and two horses. I did not ask what his bill was. I said, I have dirtied up your house, and I would come this way often. Twenty-five cents a meal is a common charge ; fifty cents for a feed of oats, two gallons each for a pair of horses ; not so much if staying over night. Twenty-five cents for a bed is usual. Nothing was said about elections. I was at Tobin's after the meeting at Alexandria. I went up there to attend a meeting : a missionary meeting ; an elder was with me ; it was an independent meeting ; it was a regularly appointed Presbyterian meeting. I was written to go as a representative elder. I never asked Tobin to vote for me ; I believe he did poll for me. He was a very old friend of mine ; we were raised as boys together, and I had never been in his house before. I believe I would have given it to him if there were no election ; he was a young man beginning business. I was at Alexander Grant's (Junior) house after the Alexandria meeting ; I went there to see a son of his who was called after me ; I saw the child ; it seemed three or four years old. Grant was not at home ; I did not ask for him. The child could talk a little. I gave the child \$10 ; I did it as an acknowledgment. I heard of his being my name-child about two years before.

I had not been in that part of the country but once before ; I live twenty miles off. I had said when I first heard the child was called after me, that I would make him a present as an acknowledgment. I gave the money to the child ; the mother said they did not want money. I said it was not for her, it was for the child. The child took the money ; I gave him two \$5 bills. The mother knew me, and shook hands. I said I understand you have a little boy here of mine ; she said there is one called after you. I was not there over ten minutes. Intended to do this long before. I knew Grant four years ago ; he was a strong supporter of mine at elections. I don't think I had met him since the preceding election. Our first acquaintance was at that election. I spoke to J. McKenzie that I was going to give this ; this was ten days or a fortnight before I went to Grant's. I had never called at the Grant's before this. I made no similar present before out of my own connections. I have no name-child. I have given presents to those called after me of my relations.

Mr. Bethune contended that the election was void, on three grounds—1st, The treating at the meetings ; 2nd, The gift to Grant's child ; 3rd, The payment of \$10 to Tobin. As to the first point, in England the law was directed against treating of individuals with a view of changing their votes, which was a species of bribery, and this accounted for the use of the words "corrupt treating" in the English Act. Our Act was directed at the practice of giving entertainments at taverns to meetings of electors, with the view of promoting the election. Next, as to the intention of the candidate in treating. As was said in an English case, the treating may not have been done with the view of gaining the vote of A or B, but it was done to gain popularity, and that was sufficient to meet the statute as to promoting his election. If in England this was the case, where a single voter was in question *a fortiori*, must it be followed here when a large number of electors were in question. The meeting and the speeches were intended to gain popularity, and the treating after-

wards could have no other object. No subject was discussed but the election, and the whole end of the meetings and treatings was the promotion of the elections. *Hereford case*, 21 L. T. N.S., 121. There was not an English case where corruptly was construed to mean *mala fide*; it only meant doing an illegal and forbidden action. Under the statute of 1871 the term "corrupt practice" was defined to include "bribery, undue influence and illegal and prohibited acts."

[The CHIEF JUSTICE said, if he had to decide the case merely on the ground that the act of treating was a corrupt practice because prohibited by the law, he would reserve the case for the Court on account of the consequences that would ensue.]

The word corruptly did not occur in the 61st section. It had been left out advisedly, and the statute must be read without it.

[The CHIEF JUSTICE. There was nothing of course immoral in treating apart from the statute. Even under the Act the candidate might treat as much as he liked at his own house, and his agents at their own houses.]

Bribes were always covered up in some way, and especially would the candidate be anxious to conceal his conduct now that such serious consequences ensued. Bribes were always given under the color of some excuse, which, it was supposed, would account for the gifts if they were called in question. As to the gift to the child; the money went eventually to the benefit of the parents, for it saved them so much of its clothing or support. It was the only instance in which Mr. Craig had made such a gift, and it had been talked over just before the elections. It was a plain case of bribery with a view of influencing the vote. If this was held to be an innocent gift, there was nothing to prevent gifts to all the children in Glengarry next election.

[The CHIEF JUSTICE.—It would be different if two or three cases had been proved against Mr. Craig.]

As to Tobin's case, sub-sec. 6, sec. 67, of the Election Act, allowed the candidate to pay expenses, but it was

carefully limited to "actual" expenses. Here, the real expenses were about three dollars; and ten dollars was given. And it had been said that the seven dollars was not for treating, though treating privately under our statutes was legal enough, except as evidence of a corrupt bargain. It was given, no doubt, with a view of conciliating the publican. He was not in need of charity, or else the fact of being an old neighbor might have divested the act of its corrupt appearance. The fact that he gave \$5 at night, when only 75 cents were due, and followed it up with a second \$5 next day, when little more was due, made the case worse. Suppose it had only been shown that he gave him \$7, and that Tobin voted, the inference would have been that it was a bribe, and he submitted that the explanation given did not rebut that inference.

Mr. MacLennan on the same side.—As to Tobin's case, he pointed out that if the plea of old acquaintanceship with Tobin was to prevail Mr. Craig might bribe all Glengarry next election, for they would all be pretty well known to him then. The excuse was of the most flimsy character. As to the payment to Grant's child, the gift was not of a character suitable for a child, and was not given so as to provide for its amusement or benefit; the money was given in the shape of two \$5 bills, and unless taken from the child would be torn up in five minutes, and not for the benefit of the child so much as for the parents. If it had been intended for the child's amusement it should have taken the shape of a toy, and if for his benefit some instructions would have been left about it. As to the treating, it was part and parcel of the meeting, and was intended to promote the election. It was given not to his personal friends but to the general body of voters at the meeting. *Hereford case*, 21 L. T. N. S., 120; *Limerick case*, 1 O'M. & H., 260.

Mr. Cameron denied that the term corrupt could mean everything illegal or prohibited by the Election Act. If so, then an election would be voided for infraction of the 2nd section (which declared who should not vote), 3rd

section, 14th section (as to who are to be returning officers), 15th section (as to poll clerks), 23rd section (as to no show of hands), 27th (as to voting in more than one place), 46th (as to personation of voters), and the 59th, 60th, 61st, 62nd, 63rd, 64th, 66th, all of which prohibit something or another. If this view prevailed, the wearing a shamrock or an orange lily, or a bright necktie, or the candidate's wife wearing a party colored scarf, or carrying a fowling-piece within two miles of a polling place, might void an election. The only illegal and prohibited acts, included as corrupt, were those in the 67th and subsequent sections, such as carrying voters, &c. The wider intention could not have been meant by the Legislature, and if it had they had not so expressed it. He contended, further, that the treating was not connected with the sitting member. He was not a candidate when either acts of treating was committed. In England, acts done before the person became an actual candidate affected him; here a candidate meant not only a person elected, but one who had been nominated, or who had declared his intention to become a candidate. The evidence of the sitting member was strongly in his own favor. The petitioners showed the dependence they placed in the respondent's evidence by calling no one to contradict him. His only object in calling those meetings was to give explanation as to his past conduct. He urged that entertainment did not mean a mere drink. In the 61st section the words entertainment and drink are contrasted, and a distinction is made. Treating was not mentioned in the statutes, and the Court or Judges should not interpolate it. The respondent had said that he had no view of influencing the election when he treated, and that stood uncontradicted.

[The CHIEF JUSTICE said he had more difficulty about the Tobin case than about the name-child's case.]

Mr. Craig's conduct had been injudicious.

[The CHIEF JUSTICE.—“ And highly dangerous.”]

After a short adjournment, the following judgment was delivered :

HAGARTY, C. J.—At the close of the evidence the petitioners' counsel reduced their objections to three matters : First, the entertainment at the meetings ; second, the ten dollar gift to the child ; third, the ten dollars to Tobin. As to furnishing entertainment to the meeting of the electors, under the 61st section of the Act of 1868, I should have little doubt in deciding that the only consequences under that statute should have been the penalty of \$100 provided by section 65. (a) The late Act, however, has raised a question as to whether this comes under the head of a corrupt practice as an illegal and prohibited act in reference to elections. If it comes under that description, it not only voids the election, but renders the candidate liable to the grievous personal disabilities set forth in the Act, for a period of eight years. If the case before me turned upon the naked question, whether the matter prohibited by clause 61 was under the present law a corrupt practice, with all its heavy consequences, I should reserve the legal point for the consideration of the Court ; but for the purposes of this case I shall treat it as such, subject to this modification, that I think by all fair rules of statute construction I am bound to hold that the evidence must satisfy me that what was done was done corruptly. When the statute says the candidate shall not do a thing with intent to promote his election, I think it must mean something beyond the literal meaning of the words. If he contemplates being a candidate, every step he takes, the issuing of hand-bills ; canvassing of electors ; the mere act of travelling to any given point ; of paying for a conveyance for such purpose ; these and a hundred other things may literally be said to be with intent to promote his election. When, therefore, a charge like the present is made, I think the evidence must satisfy the Judge, beyond reasonable doubt, that the giving of the

(a) The clauses relating to Treating, here commented upon by the learned Chief Justice, were materially altered by subsequent legislation. In section 61, the words " with intent to promote his election," and " with intent to promote the election of any such candidate," were struck out ; and the furnishing of drink or other entertainment to any meeting of electors assembled for the purpose of promoting an election, was made a corrupt practice, by 36 Vict., c. 2, s. 2 ; now R. S. O., c. 10, s. 151. See *West Wellington*, 1875, *post*.

entertainment was intended directly to influence the election, and to produce an effect upon the electors. If not so, why were the words introduced? They are quite useless if it was intended to prohibit the mere giving of an entertainment to a meeting of electors, absolutely without reference to the giver's intention and design in the act of giving. If the Legislature make it a corrupt practice to give entertainment with intent to promote his election, it must in my judgment compel a decision that the intent to promote must be a corrupt intent in the legal sense of the term as hereinafter explained. I am dealing with the statute avowedly in its preamble aimed at corrupt practices, which Act at the same time pointedly omits all mention of treating from its language. Whenever, therefore, the act prohibited is not in its very nature necessarily corrupt, such as bribery, I feel an almost insuperable difficulty in holding it to be a corrupt practice, involving such momentous consequences, unless it be done corruptly. In the statutable sense of that term, what is the meaning of "corrupt?" In the *Bewdley case* (1 O'M. and H., 19), Blackburn, J., says, "corrupt" means "with the object and intention of doing what the Legislature plainly means to forbid." In the *Hereford case* (*Ibid.* 195), the same learned Judge says, that corrupt treating means, "with a motive or intention, by means of it to produce an effect upon the election." In the *Lichfield case* (*Ibid.* 25), Willes, J., says, treating is forbidden "wherever it is resorted to for the purpose of pampering people's appetites, and thereby inducing electors either to vote or to abstain from voting otherwise than they would have done if their palates had not been tickled by eating and drinking, supplied by the candidates." Again he speaks of treating "as a means of being elected . . . in order to influence voters." And so in the *Tamworth case* (*Ibid.* 83), the same learned Judge suggests cases where treating may well be considered and held corrupt, and he says it is always a question of intention—an intention to produce that effect which the Legislature meant to forbid. See also the

Wallingford case (*Ibid.* 57), and the facts there held to shew corrupt intention. In the *Coventry case* (*Ibid.* 106), the same Judge says, "when eating and drinking takes the form of enticing people, for the purpose of inducing them to change their minds and vote for the party to which they do not belong, then it becomes corrupt." In the *Bradford case* (*Ibid.* 37), Baron Martin defines "corruptly" thus: "I am satisfied it means a thing done with an evil mind and intention. Unless there is an evil mind and intention accompanying the act it is not done corruptly. It means an act done by a man knowing that he is doing what is wrong, and doing it with an evil object. There must be an evil motive in it, and it must be done in order to be elected." In the case last mentioned, it was not done in order to be elected, because it was known how all the men would vote. They were there because they were voters pledged to support respondent. It is therefore idle to suppose the meat and drink were given to induce them to vote. In the *Staley-bridge case* (*Ibid.* 73), Willes, J., says "that it must be done to influence the election by the giving of meat and drink. The question whether or no there is a corrupt giving of meat or drink must, like every other question of intention, depend upon what was done, and in a great measure the extent to which it was done, the manner and way: and therefore it is a question which must always be more or less a question of fact." All these remarks are made under a statute speaking of corrupt treating in order to be elected, or for the purpose of corruptly influencing persons to vote or refrain from voting. I may also refer to the very striking remarks of Willes, J., in the *Bodmin case* (*Ibid.* 124), where he says the Judge must satisfy his mind whether that which was done was really done in so unusual and suspicious a way that he ought to impute to the person who has done it a criminal intention in doing it, or whether the circumstances are such that it may fairly be imputed to the man's sincerity, or his profusion, or his desire to express his good will to those who

honestly help his cause without resorting to the illegal mode of attracting voters by means of an appeal to their appetites. On both the occasions when entertainment was given, the respondent, according to his uncontradicted evidence, was still undecided as to his becoming a candidate. When the meetings broke up he offers, and does treat all persons there. The amount expended was, on the first occasion, \$5; on the second, \$12. I feel bound to say that the evidence given by the respondent seemed given with great candor, and favorably impressed me as to its truth, and I feel wholly unable to draw from it any honest belief that he provided this entertainment, consisting apparently of a glass of liquor all round, with an idea that he was thereby seeking to influence the election, or promote his election in any of the senses referred to in the cases. He was unaware of the state of the law on this subject, as he says. He is not to be excused on the ground of his ignorance; but the fact (his ignorance) is not wholly unimportant as bearing on the common custom of the country—too common, as it unfortunately is—of making all friendly meetings the occasion or the excuse of a drink or treat. The strong impression on my mind, and I think it would be the impression of any honest jury, is that the treats in question were just given in the common course of things, as following a common custom. In the appropriate language already cited, the Judge must satisfy himself whether that which was done, was really done in so unusual and suspicious a way that he ought to impute to the person a criminal intention in doing it.

On the second head the petitioners' counsel have rested their case wholly on the respondent's evidence, and I am asked to infer from it the existence of a corrupt intention to bribe. While telling us of his giving this money, he also swears that it was simply in pursuance of a declared purpose of his, avowed two years before. There being nothing very extraordinary in the presentation of \$10 to a god-child or name-child, either in the fact or

the amount of the gift, I do not feel at liberty to refuse to believe that part of his evidence which proves his innocence, and to accept as conclusive the existence of a motive which he expressly disclaims.

Thirdly, as to \$10 to Tobin, I think it was an act of singular imprudence under the circumstances; of this I have no doubt. But I am not so clear as to its being corrupt and criminal. The explanation given by respondent is, that Tobin was a very old friend, brought up as a boy with him, a young man recently started in business, and he (respondent) had never been in his house before; and as he had dirtied the house much, in paying for his actual expenses, which Mr. Bethune says could not exceed three dollars, he thought it right to pay him as it were a compliment on his first visit, and he said he would have done the same thing if it had not been election time. Had I found respondent generally resorting to such a course in his canvass, and making payments to innkeepers and others largely in excess of the measure of fair remuneration, or even had there been proof of several such instances, I think I should have found great difficulty in accepting the explanation. In this isolated case, in an election contest singularly and exceptionally free from any profuse expenditure, conducted, in fact, upon the most economical principles, with no personal canvass or colorable employment of agents, I find it still harder to refuse to accept the innocent interpretation. The election for Glengarry is shown not to have cost the successful candidate over \$100 for every expense. I only refer to this fact as in some way rebutting the imputation of any general design of carrying the election by corrupt means. Had the evidence been at all evenly balanced, I should have been placed in the most painful position of deciding in a quasi-criminal case, without the aid of a jury, a point involving such grievous results to a candidate. Such position is well described in a late English case, *Stevens v. Tillet*, L. R., 6, C. P., 147, where the Judge says: "I cannot imagine to myself a jurisdiction more painful or more

responsible than that of a Judge deciding, without the assistance of a jury, that a candidate has been personally guilty of so grievous an offence." I have to accept the heavy responsibility imposed upon me to decide on a man's motives and intentions; in the words of the last case cited, "with all the questions that must operate on the mind of a Judge not assisted by a jury in pronouncing alone, and without appeal, in a criminal case, and to make the candidate subject to the grievous disabilities imposed in respect of his future status, both parliamentary and otherwise."

I think the giving of refreshments to public meetings a most unsafe and dangerous proceeding on the part of the candidate. He is always exposed to imputations on his integrity, and to a possible adverse decision on a judicial inquiry. I reserve to myself to decide whenever occasion may require the broader question suggested on the construction of our statutes. My decision rests on a construction possibly more favorable to the petitioners' view of the law than may be hereafter adopted. Acting, as I am satisfied any jury desirous to act honestly would act on the facts in evidence, I acquit the respondent of the charges advanced against him. To mark, however, my sense of the unwise and imprudent matters that have most probably given rise to this petition. I direct that one-half of the gross amount of respondent's costs taxable against petitioners be disallowed, and that petitioners pay the other half to the respondent.

(5 *Journal Legis. Assem.*, 1871-2, p. 6.)

STORMONT.

BEFORE CHIEF JUSTICE RICHARDS.

CORNWALL, 12th to 17th June, and 12th September, 1871.

JAMES BETHUNE, *Petitioner*, v. WILLIAM COLQUHOUN,
Respondent.

Petition—Practice—Writ of Election—Scrutiny—Qualification—Mistake in entry of voter on the Roll—Right to Vote—Value of Property—Amendment—Aliens.

- Held*, 1.—That the writ of Election and Return need not be produced or proved before any evidence of the election is given.
- 2.—On a scrutiny the practice is for the person in a minority to first place himself in a majority, and then for the person thus placed in a minority to strike off his opponent's votes.
- 3.—The name of the voter being on the poll-book is *prima facie* evidence of his right to vote. The party attacking the vote may either call the voter, or offer any other evidence he has on the subject.
- 4.—A voter being duly qualified in other respects, and having his name on the roll and list, but by mistake entered as tenant instead of owner or occupant, or *vice versa* : *Held*, not disfranchised merely because his name was entered under one head instead of another.
- 5.—The only question as to the qualification of a voter settled by the Court of Revision under the Assessment Act, is the one of value.—*George N. Stewart's vote*.
- 6.—Where father and son live together on the father's farm, and the father is in fact the principal to whom money is paid, and who distributes it as he thinks proper, and the son has no agreement binding on the father to compel him to give the son a share of the proceeds of the farm, or to cultivate a share of the land, but merely receives what the father's sense of justice dictates : *Held*, the son has no vote.—*Wm. P. Eamon's vote*.
- 7.—In a milling business where the agreement between the father and the son was, that if the son would take charge of the mill, and manage the business, he should have a share of the profits, and the son, in fact, solely managed the business, keeping possession of the mill, and applying a portion of the proceeds to his own use : *Held*, that the son had such an interest in the business, and, while the business lasted, such an interest in the land, as entitled him to vote.—*Robert Bullock's vote*.
- 8.—Where a certain occupancy was proved on the part of the son distinct from that of the father, but no agreement to entitle the son to a share of the profits, and the son merely worked with the rest of the family for their common benefit : *Held*, that although the son was not merely assessed for the real but the personal property on the place (his title to the latter being on the same footing as the former), he was not entitled to vote.—*John Raney's vote*.
- 9.—Where the objection taken was, that the voter was not at the time of the final revision of the Assessment Roll the *bona fide* owner occupant or tenant of the property in respect of which he voted ; and the

evidence shewed a *joint* occupancy on the part of the voter and his father on land rated at \$240 : *Held*, that the notice given did not point to the objection that if the parties were joint occupants they were insufficiently rated, and as the objection to the vote was not properly taken, the vote was held good.—*Owen Baker's vote.*

[The learned C. J. intimated that if the objection had been properly taken, or if the counsel for petitioner (whose interest it was to sustain the vote) had stated that he was not prejudiced by the form of the objection, he would have held the vote bad. See as to this judgment, the case of *Duncan Cahoy, post.*]

10.—Where the father had made a will in his son's favor, and told the son if he would work the place and support the family he would give it to him, and the entire management remained in the son's hands from that time, the property being assessed in both names—the profits to be applied to pay the debt due on the place : *Held*, that as the understanding was that the son worked the place for the support of the family, and beyond that for the benefit of the estate, which he expected to possess under his father's will, and that he did not hold immediately to his own use and benefit, and was not entitled to vote.—*Joshua Weort's vote.*

11.—Where the voter had only received a deed of the property on which he voted on the 16th August, 1870, but previous to that date had been assessed for and paid taxes on the place, but had not owned it : *Held*, that not possessing the qualification at the time he was assessed, or at the final revision of the roll, he was not entitled to vote.—*Duncan Cahoy's vote.*

A question being raised in this case as to the sufficiency of the notice of objection that the voter was not actually and *bonâ fide* the owner, tenant or occupant of real property within the meaning of Sec. 5 of the Election Law of 1868, the learned C. J. remarked, "The respondent's counsel does not say that he is prejudiced by the way in which the objection is taken ; if he had, I would postpone the consideration of the case. It is objected that the case of Owen Baker should be subject to the same rule, and if the question had been presented to me in that view, I think I should have felt at liberty to go into the case, giving time to the petitioner to make further inquiries, if he thought proper." The particulars would thereupon have been amended.

12.—Where the voter had been originally, before 1865 or 1866, put upon the Assessment Roll merely to give him a vote, but by a subsequent arrangement with his father, made in 1865 or 1866, he was to support the father, and apply the rest of the proceeds to his own support : *Held*, that if he had been put on originally merely for the purpose of giving a vote, and that was the vote questioned, it would have been bad, but being continued several years after he really became the occupant for his own benefit, he was entitled to vote, though originally the assessment began in his name merely to qualify him.—*Benjamin Gore's vote.*

13.—Where the voter was the equitable owner, the deed being taken in the father's name but the son furnishing the money, the father in occupation with the assent of his son, and the proceeds not divided : *Held*, that being the equitable owner, notwithstanding the deed to the father, he had the right to vote. *Held*, also, that being rated as tenant instead of owner did not affect his vote.—*Donald Blair's vote.*

14.—Where the voter and his son leased certain property, and the lease was drawn in the son's name alone, and when the crops were reaped the son claimed they belonged to him solely, the voter owning other property, but being assessed for this only and voting on it : *Held*, that although he was on the roll and had the necessary qualification, but not assessed for it, he was not entitled to vote.—*Samuel Hill's vote.*

15.—Where the voter was the tenant of certain property belonging to his father-in-law, and before the expiration of his tenancy the father-in-law, with the consent of the voter (the latter being a witness to the lease), leased the property to another, the voter's lease not expiring until November, and the new lease being made on the 28th March, 1870: *Held*, that after the surrender by the lease to which he was a subscribing witness, he ceased to be a tenant on the 28th of March, 1870, and that to entitle him to vote he must have the qualification at the time of the final revision of the assessment roll, though not necessarily at the time he voted, so long as he was still a resident of the electoral division.—*Joshua Rupert's vote*.

16.—Where a verbal agreement was made between the voter and his father in January, 1870, and on this agreement the voter from that time had exercised control, and took the proceeds to his own use, although the deed was not executed until September following: *Held*, entitled to vote.—*Wm. J. Gollinger's vote*.

17.—Where the voter was born in the United States, his parents being British-born subjects, his father and grandfather being U. E. Loyalists and the voter residing nearly all his life in Canada: *Held*, entitled to vote.—*Wm. Place's vote*.

Special report, and observations on making the revised lists of voters final, except as to matters subsequent to the revision.

The petition contained charges as to illegal votes, and claimed the seat on a scrutiny for the defeated candidate, James Bethune. The vote was: For respondent, 705; for James Bethune, 700; majority for respondent, 5.

Mr. R. A. Harrison, Q.C., and the Petitioner in person appeared for the petitioner.

Mr. J. Hillyard Cameron, Q.C., and Mr. D. B. McLennan for the respondent.

Mr. Harrison in opening the case for the petitioner, stated that he intended going into the question of scrutiny first, and proposed to follow the practice of the English cases, viz: for the person in a minority to first place himself in a majority, then the person thus placed in a minority to strike off his opponent's votes.

RICHARDS, C. J.—We had better follow the same practice here.

Mr. Cameron took the objection, that the writ of election was necessary before any evidence of the election could be given, and that the writ and return should be produced.

Mr. Harrison replied, and cited the *Coventry case*, 20 L. T. N. S. 406, where Willes, J., was reported to have

said, "I shall not require the election to be proved in any of these cases. The poll books are here, and they tell me an election was held."

RICHARDS, C. J.—I consider the proceedings somewhat analogous to an interpleader issue. The matter is sent down here now to be tried, and it seems to me that after a petition has been presented asserting an election and return, and parties have appeared demanding particulars, &c., and have themselves made recriminatory charges, and delivered lists of votes objected to, it would be very inconsistent now to assume that there had not been an election and return. If it were so, we should probably have had an appeal long ere this showing that fact. I think the *dictum* of Willes, J., in the *Coventry case* reasonable, and it ought to be followed.

Mr. Harrison then urged that the respondent should first dispose of the recriminatory charges of bribery.

Mr. Cameron stated that as to the recriminatory charges, there were only three which affected the petitioner's *status* under the statute, and as to them, he was not prepared to go on; as to the others, that they did not charge personal knowledge of the corrupt practices by the petitioner, and in his opinion there must be personal participation in the corrupt practice by the petitioner to disqualify him.

RICHARDS, C. J.—I do not think he ought to be compelled to go on with the first three now.

Mr. Harrison contended that the onus of proving a qualification was thrown on the voter, or on the party who wishes to sustain the vote.

RICHARDS, C. J.,—I think the voter being on the poll book is *primâ facie* evidence of his right to vote. If the party objecting to it resolves to attack it, he may call the voter if he please, or give any other evidence he has on the subject.

Counsel on both sides then requested the ruling of the Court on the question of a voter, properly qualified, but who by mistake was entered on the roll as tenant, instead of owner or occupant.

RICHARDS, C. J.—The *rota* Judges have determined to hold that when a voter is duly qualified in other respects, and his name is on the roll and list, but is by mistake entered as tenant, instead of owner or occupant, or *vice versâ*, he, really having the qualification, is not disfranchised, merely because his name is entered under one of the heads, instead of under another.

The petitioner then proceeded with the scrutiny :

GEORGE N. STEWART'S VOTE.

Gilbert Stewart was called on the vote of *George N. Stewart*. It appeared by the evidence that the witness was the owner of Lot 6, in the Township of Osnabruck, and 4 or 5 acres of Lot 7, for the latter of which George N., his son, the voter, was assessed. The son had been assessed on this for 3 or 4 years. The taxes were paid the same as the rest of the taxes on the place. The son had no more interest in these 4 or 5 acres than in the rest of the farm. He was accustomed to use what he required for necessities, clothing, &c., but did not own anything as of right on the farm.

Mr. Cameron contended that under the Assessment Law, the voters' list is final as to qualification, and cited 32 Vic. c. 21, s. 7, subs. 10.

RICHARDS, C. J.—The *rota* Judges have had this question under consideration, and have arrived at the conclusion that under the statute the only question of qualification which was considered as settled by the Court of Revision, was the one of value. The others are open for investigation on a scrutiny. Vote bad.

WILLIAM P. EAMON'S VOTE..

Joseph Eamon called on the vote of *Wm. P. Eamon* : I live in Osnabruck. I live on the East $\frac{1}{4}$ of 7 and West $\frac{1}{4}$ of 6 in that concession. I have lived there about

23 years. I own the land. Wm. P. Eamon is my son. We have possession. He lives in the same house with me, a member of the family. He makes his living off it. I gave him a privilege of half what we raise—the bargain is verbal. It has been going on that way for some years. There was no bargain in particular made about it. Never made division of the crop, except when sold. I gave him more than half of it. There never was any bargain made between us. He is the only son I have. I expect him to have the place after I die. He has a family. There is no distinct share agreed on between us. He, when the grain is sold, gets better than half of the money. I give it to him, because he does more than half the work. I allow him to give in 50 acres of the land. He has no title of it. That is not cultivated any different from the rest. He does the chief part of the work. We paid the taxes and did the road work between us. I allowed him to give in the 50 acres to satisfy him. I don't know if it was to give him a vote—it might have been. I don't recollect its being talked over for that purpose. The house and barn on that part I gave it myself. The grain is all put in the same barn—used at the same time. My son has three children. I have my son and a daughter. He has always lived with me. I told him when he was married he could bring his wife there, and remain with me. He expects, of course, to get all my property. This arrangement continued since he was married. He has a part of the house considered his own, but we all eat together. When anything is sold he receives a part of it. The practice has grown up between us since he was married, to give him a share of the proceeds, and that has taken place every year since he was married. He still hands me the money, and I give him his portion. Sometimes it amounts to more than others, according to what he sells. He manages the whole farm for me. I have been in the habit of considering him as jointly in occupation of the farm.

Cross-examined: His proportion is more or less, as the grain will sell. We can't divide the grain—we divide the

money. I generally give him more than half. He has got half ever since he was married. We keep no accounts. I just handed him what I had a mind to, and that was the only arrangement, and he was satisfied. He had no writing to him made out. If he was not satisfied with what I gave him, he could not compel me to give him any more. I did not intend to make any arrangement with him so that he could compel me to give him any share. If we should at any time disagree, I could turn him out at any time. He has no right to remain there. I am master myself.

It appeared in this case that the assessment roll showed both father and son rated for the land, two quarter lots. On the voters' list the father was rated for one quarter, the son for the other.

Mr. Cameron contended that the vote was good, and cited the Assessment Act of 1868-9, sec. 27, Election Act 1868-9, sec. 5, sub-sec. 2, followed by the interpretation of the term "occupant," sec. 6, sub-sec. 2.

RICHARDS, C. J.—The rule applicable to this case, and which I think is in accordance with the view of the *rota* judges, is that when the father and son live together on the father's farm, the father being in fact the principal, as in this case, to whom moneys are paid over, and who distributes them as he thinks proper, and the son has no agreement or understanding binding on the father, either to compel him to give him a share of the proceeds of the farm, or to allow him to cultivate a share of the land, and he merely receives what he gets from the father's sense of justice and right, that then the son has not such an interest as qualifies him to vote under the election law.

ROBERT BULLOCK'S VOTE.

Robert Knight Bullock, called on the vote of *Robert Bullock*; Robert Bullock is my son. I own Lot No. 8 in 1st Con., Osnabruck. I have owned it 30 years and upwards. I have been in possession of it, and am still in possession of it. My son Robert was born on the land.

He has not always been there with me. He has been with me the last four years. He occupies the mill on the west part of the lot. I own the mill. My son runs the mill for his benefit and mine. There is only a verbal agreement between us about it. It was made four years ago. The agreement was that he should have a fair proportion—whatever was considered as fair. I think the agreement was made in presence of the whole of the family. He keeps the accounts. We have never had a settlement. He had all he required. He charged himself with what he took. Cannot say what he charged himself the last four years. He handed over the proceeds every week, save what he kept for himself, to his mother or me. He is a miller—runs the mill. The business is carried on in my name and his. The invoices are generally made out in the name of R. K. Bullock. I have seen some made out in his name. He lives at my house, with the rest of the family. The agreement was to last as long as it suited him and me. I think he has kept more than was reasonable to clothe him and furnish pocket money. We have had losses in the business. He gave no money towards them, but was more moderate in what he drew. He is not married. I cannot tell what he got in any one year. He was to have a liberal allowance, having charge of the mill—more than most young men.

Cross-examined : It is a grist mill, with three run of stones ; he has no wages ; he runs this mill jointly with me, and has done so for four years. I could not put him out of the mill as I thought proper. I have had no settlement with my son as to our transactions. He will be 28 next birthday. I thought him entitled to a good liberal allowance—once or twice I thought he drew more than required for the business we were doing just then. Sometimes the profit was very small. He is a miller—understands the trade. I presume there would be some trouble in putting him out of the mill—some time to give him notice. The understanding between us was, when we returned from the West, if he would stay, he would have a

good liberal allowance for his work. There was a man employed about the mill at so much a month ; he was paid in cash ; Robert hired him ; he took what he chose ; sometimes I presume what he took was more than sufficient for his ordinary expenses. The share he took would amount to more than £50 a year. He was differently situated from my other sons. He did all the collecting of the debts ; is still there on the same terms. Before he took charge this was rated in my name. Immediately after he came there he made the arrangement ; there was a change. I think he sent the money for the taxes ; I know I did not. I am not there a great deal ; he is, and he attends to those things. He does not get \$300 in cash from the mill—not much less than \$200. He boards at home. I have a first-class miller at \$500 a year and the house, and they board themselves.

Re-examined : I have bought some of his clothing since he came back. I did not charge him with it ; sometimes he pays for it, sometimes not. I have paid for a good share of his clothing for the last four years. When he wants to go away from home, and the horses are there, he generally takes one. I am certain he took more than \$100 in cash in each year for the last year or two.

RICHARDS, C. J.—I think in this case, the original agreement between the parties shows an intention to give the son something more than a mere gratuity such as the father might choose to allow him. The father says he told him if he would stay at home and take charge of the mill, he would give him a share of the profits ; no specific share was agreed on, and the son took out of the proceeds what he thought right ; the father sometimes thought it too much, but did not mention this to the son ; did not close the business or the connection. I think here the son had something more than a sum of money out of the premises at the will of the father ; he was entitled to a share ; had an interest in the business, and, as such, while the business lasted, an interest in the land, and was at all events a partner in the profits, and might be considered as

having an interest in the land. Bullock says, I understood we were to be partners in the milling business under this arrangement, and he was to have a fair proportion of the profits. I, therefore, think this vote good.

JOHN RANEY'S VOTE.

John Raney, called as to his own vote: I voted in Stormont as the owner of the east half of twenty-five, in the third concession, Roxborough. My father owns it; I have no title or lease of it; I live on it; have lived on it eighteen or twenty years. Father lives on it with me. We both live in the same house. I was married about two years ago. Father has told me he would give it to me. He has offered me a deed of half the lot. Mother is dead. I have a sister living; my sister managed the household until I was married. My father is about seventy. I always remained there with him. I thought he would give it to me. No writing between us. I have remained in the expectation of getting the whole when he dies.

Cross-examined: My father is not able to work. We live together. He said he would give me a deed of half at any time, and that the whole place was for me. My brother left five years since or more; he is younger than I. There are a hundred acres in the lot, thirty-five or forty acres cleared. I sell if I am there; he sells if he is there. I do pretty much all the business. When he sells grain he gets all the money. I am relying on what he said to me in staying with him. It has been assessed to me eight or nine years; sometimes my father, and sometimes I myself give it in. Father pays if he is there when the assessor comes; and when I am there, I pay. I keep the store account in my name and pay the necessities for the house. He directs the place to be assessed in my name. I don't know who is master of the house; we are both there; he built it. I consider I ought to obey his orders as a son ought to do towards his parent. I tell him what I do with regard to the business of the place. One of the horses I bought this winter I claim. My sister and

sister's daughter claim most of the horned cattle. When I sell anything, I consult him if he is there ; if not there, I sell and tell him. The cattle are assessed in my name—everything. My father, when able, gets about and sees to odd things about the house, but can do no hard work. I consider it my duty to consult him about what I sell. If he was about to assist a neighbor, and consulted me about it, I don't think I would be justified in objecting to his doing so. I consider him the owner of the place. Before I was married we were living together ; I would give in he was boss of the house. My sister was also living there, and also a niece of mine, seventeen or eighteen years of age.

Mr. Harrison contended that the voter had a right to enforce specific performance of the agreement with his father, and cited *McDonald v. Rose*, 17 Grant, 657.

RICHARDS, C. J.—This case has much in it to shew a kind of occupancy distinct from the father, and if the father had received from him a certain share, or he himself a certain share, or there had been an agreement between them, either expressed or implied, that he should receive the profits of the place, and the father lived with him, it might have been different. But the case seems to me, to be really that of a man and some of his unmarried children and grand-children living together *en famille*, the hard work being done by the younger branches who are able to work, the old man not being able to do so, but in fact being the head of the family nevertheless. It is true the place is assessed in the name of the son, but so were the cattle and other loose property, as I understand from the witness, and he did not claim to own them. On the whole, I think this vote bad.

OWEN BAKER'S VOTE.

Owen Baker, called as to his own vote. The evidence was very similar to that in the case of Robert Bullock. It appeared on the evidence of the voter that he and his elder brother had entered into an agreement with their

father, that they were to carry on his (the father's) mercantile business in the village of Aultsville for three years, the sons to leave the business at the expiration of that time in as good condition as when they commenced—the sons to have all the profit. Shortly after the agreement the elder brother left the country, and the voter continued to carry on the business with the aid of his father. The voter was assessed on ten acres of the farm (one hundred acres) which was managed in the same manner as the mercantile part of the concern. The books were kept and purchases made in the father's name, who could also sell what he pleased out of the concern, or the produce of the farm.

On cross-examination he stated that he thought his father could not compel him to leave, if he was unwilling, before the expiration of the three years. When the agreement was entered into stock was taken. The son could sell a team if he thought fit without speaking to his father about it, could sell stock as he pleased, and appropriate the money. The ten acres was worth about \$30 an acre.

Simcon Baker, the father of the voter Owen Baker. The assessment on the roll for the son was ten acres, value \$240. He was entered as freeholder. Was not certain if he gave it in as occupant. No one lived on the farm, but the son worked it. Had promised the interest of it for three years. The understanding with the son was, he was to keep it as good as when they started. Would consider it wrong to take \$20 out of the produce of the farm, but could do it if he thought proper. Could buy and sell in the store, but could not say that he could take anything without the son's leave. The ten acres was considered sufficient rating to give the son a vote. There was no agreement in writing as to the land or anything else.

On cross-examination this witness stated that the object in making the arrangement was to benefit the son; he was working in Matilda, and the witness wanted him and his brother at home. They thought of going West, which

he, the father, did not desire. They took up the business on the arrangement that they were to have all the profits for three years—the stock to be returned to witness as good as when they commenced—the personal expenses of the witness to be the same as the rest of the family.

Mr. Cameron objected that the voter had no interest in the land. He was not a joint occupant with the father and if he were, the assessment was not sufficient in amount to qualify for both. Election Act, 1868-9, sec. 5, sub-sec. 2.

RICHARDS, C. J.—I consider the father and the son have a substantial interest in the business and its proceeds, and in the proceeds of the farm, and in the land; but perhaps not strictly a term. I think the interest the son has is in the nature of a joint one with the father.

Mr. Harrison contended that the objection taken to this vote does not touch the point. The grounds of objection are in schedule No. 6, and are thus stated: "List of voters who voted for the petitioner at the said election, objected to on the ground that they were not, at the time of the final revision of the assessment roll in which their names appear, and on which the respective voters' lists were based, the *bonâ fide* owners, occupants, or tenants respectively of the property in respect of which they were assessed and voted."

Mr. Cameron, said that the objection came fairly up, under the objection that he is not a *bonâ fide* owner, occupant, or tenant of the property in respect of which they were assessed and voted. This means that he was not assessed to the value to qualify him. See *Wolferstan*, p. 98.

RICHARDS, C. J.—I do not consider that the notice, as given, points to the objection, that if the parties were joint occupants, they were insufficiently rated to qualify the voter. I therefore hold this vote good, on the ground that the objection taken does not point to the real difficulty, viz., the joint interest being insufficient. But if the objection had been properly taken, or if the counsel for the petitioner (whose interest it was to sustain the vote) had

stated that he was not prejudiced by the form of the objection, I would have held the vote bad. (See *Cahey's vote, post.*)

JOSHUA WEORT'S VOTE.

Joshua Weort, called as to his own vote : I live on part of 16, in 7th Concession of Osnabruck ; my father lives with me. I have no lease or deed. He made his will to me last January. Some seven years ago my father told me if I would stay and reclaim the place and support him and my mother and my sister, and if I worked the place, he would give it to me. I did work the place, but made very little out of it. It was pretty well run down ; and so involved, that the loose property would not come near paying the demands. I worked on and made money, and redeemed the place, and father made a will in my favor in January last. I am married ; have been four years. My wife and all live together in the same house. I think my father is about 77.

Cross-examined : I was to have the use of the place in the meantime. From that time I have had the use of the place just as I liked ; used it as my own ; contracted and paid all debts as my own—I have used the place just as if I had had a deed of it for the last four years. He then became so old that he could not assist me. He has not been able to do anything of any value. I bought and sold stock on my own responsibility. There was some stock on the place when I went on ; it was understood it was to be mine if I paid off the debts. I have paid off between four and five hundred dollars. There was a change in matters after that ; I became the master there, and he consented to it. My father used to apply to me for money within the last two or three years. I am managing this business as my own, on my own account, and for my benefit, and that is the understanding between us. I presume it is so generally understood in the neighborhood. It is assessed, for four or five years last, in the name of myself and my father ; the cattle all assessed in his name.

Re-examined : I did this to clear off the place ; to get it in the end for myself. That was the motive with which I made the agreement. My father and the family were to have their support in the meantime, and whatever I made was to go to pay off the debts ; they are not wholly paid yet. I had confidence in my father that he would will it to me, and did not make any agreement as to what I would have in the event of his not willing it to me.

RICHARDS, C. J.—The arrangement is, in fact, such as shows the use and occupation for the benefit of the estate in paying off the debt. I consider that the real understanding is, that the voter works for the benefit of the estate, and beyond what is used in supporting the family is to go to that purpose. If he had had a right to it for his own benefit, it would be possessed for his own use and benefit. What he really works for, and the profit of the estate goes to, is his expected possession of his father's estate under his will. I think this vote bad.

DUNCAN CAHEY'S VOTE.

Duncan Cahey, called as to his own vote : I live in Roxborough, 1st Con., part of 17 and 18. My father's name is Edward. My father lives on the lot ; has lived there 30 years ; owns part of it. I own the south part of west half of 17. I have a deed for it ; I have it with me : I got it last August, the day it was dated ; its date is the 16th August, 1870. I did not own the lot until I got the deed. I had no claim to it before that. I voted at the election ; I am called McCahey. I don't own any other property ; the property has been assessed in my name for the last 5 or 6 years. My father is over 70. I have generally paid the taxes.

Mr. Harrison.—This man is not a voter within the meaning of section 5 of the Election Act 1868-9. He is not rated for the lot—if he was, he is not a voter under the section. The true meaning of the section is, that he was so possessed at the time of assessment. See the form of oath to be administered to voter under section 41 of the Act.

Mr. Cameron, contra.—There is nothing to show that the roll might not have been revised after he got his deed—nothing in the 5th section of the Act to declare that the person should have the title, and nothing in the section referred to, to call attention to the particular objection now raised, and it is only by referring to the oath that the point comes up.

Mr. Harrison, in reply.—The statute only permitted appeals to 5th July, under the Assessment Act, 32 Vic., cap. 36, section 63, sub-section 6. The general form of objection was sufficient: if the parties thought it not sufficiently specified, they should have demanded better or further particulars.

RICHARDS, C. J.—I think this vote bad, because the voter did not possess the qualification at the time he was assessed, or before the final revision of the roll. The respondent's counsel does not say that he is prejudiced by the way in which the objection is taken. If he had been, I should postpone the consideration of the case. It is objected that the case of Owen Baker should be subject to the same rule, and if the question had been presented to me in that view, I think I should have felt at liberty to go into the case, giving time to the petitioner to make further inquiries if he thought proper.

BENJAMIN GORE'S VOTE.

Benjamin Gore, called as to his own vote. It appeared by the evidence of the witness, that he lived with his father, and had voted on his, the father's property. His father had made a will in his favor, but he had no title but a verbal agreement with the father. The agreement was made at the time the will was made, about 1865 or 1866. The son was to take the proceeds after supporting his father and himself; did not account to his father for the proceeds. Witness was assessed for 10 acres, value \$250. The assessment was made in his, the witness' name, before the arrangement with the father. It was done to give him a vote. The father paid the taxes before the agreement, the son pays them now.

Mr. Cameron, contended that the arrangement was a colorable one, merely to give the son a vote. The ten acres were not specially mentioned.

RICHARDS, C. J.—If the name had been put on originally (before 1866) merely for the purpose of giving a vote, and that was the vote questioned, I should probably hold it bad; but being continued after he really became the occupant for his own benefit (since 1866), I cannot say that he is not now properly a voter, even though the name was continued there to enable him to vote. I think the vote good.

DONALD BLAIR'S VOTE.

James Blair, called on the vote of *Donald Blair*: I live on the west $\frac{1}{2}$ of Lot 26 in the 6th Con., Roxborough. I am the father of Donald Blair. He lives with me. He has no written agreement, lease, or instrument. When it was purchased he sent me the money to pay for it, about four years ago, and I took the deed in my own name. He was then in the States, and came back a year after. He is living with me, as the other son. He is the oldest. He is not married. By means of that lot he has bought another last spring. He paid only \$300 for the lot. We are all working the place. He has got a deed for 32 in same concession. Bought it last spring. I own my place. The N. W. $\frac{1}{2}$ of 26 in the 6th Con. is the lot the boy voted on and which he sent me the money for. My sons and me are working and occupying it since about a year ago. He had not any interest in it beyond this, that his money bought it.

Cross-examined: I bought Lot 26 more than thirty years ago. I bought 25 for Donald. I wrote him I could buy the place for him cheap. I mentioned \$300, if he could send me the money. I bought the place about four years ago. Took the deed in my own name, as he was not at home (he is about 27), and when he returned he went to live with me. Neither of us live on 25; he works it it all comes in together, and is worked the same as my farm. By the labor and assistance of myself and his

brother, we made money which enabled him to buy another place. I consider it his, and it is his. He thought it would be too little to give his vote on the lot he bought, and he was assessed for three years for Lot 25. He was assessed the first time the assessor came round after I bought it. The other son is 20. I have three daughters unmarried and two married. My son never asked me for a deed for it, nor did we ever speak of it. Nothing separate from what was raised on 25 for my own. No building now on 25. We all worked on the three lots assisting one another. Before we bought the last lot we all worked on the two, assisting one another. We make no shares. The young boy expects my lot; it is so understood. The homestead is 130 acres with buildings. The oldest son gets 150 acres—no buildings. The girls are to have the loose property. We are working harmoniously, assisting and aiding each other. It is understood in the neighborhood that he is the owner.

Mr. Cameron.—The father is trustee for the son. They are not rated for enough to have them both qualified. And as to the ownership, the father is in possession, and has the profits to his own use, and therefore is literally the owner.

RICHARDS, C. J.—I think the father is in fact the owner, but not in his right as owner in fee, but as occupant with the assent of his son. I think, on this evidence, the son is the equitable owner, and rated as owner, would have a right to vote, notwithstanding the deed to his father, and I hold that the mistake in that respect, being rated as tenant instead of owner, does no harm. I therefore for the present hold the vote good, but, if necessary, may reserve it.

SAMUEL HILL'S VOTE.

Samuel Hill, called as to his own vote. It appeared, on the evidence of the witness, that he and his son had leased certain property, the lease was drawn in the son's name alone, and when he and his son reaped the crops, the son claimed that they belonged to him solely. The witness

owned other property, but when the assessor called on him he requested him to assess this particular property to him, and on this he voted.

Mr. Harrison.—As he was on the roll, and had the necessary qualification, though not assessed for it, the vote should stand.

Mr. Cameron.—He voted in right of this property, and had it assessed to him in preference to the other by his own desire, and cannot in consequence now claim to vote.

The CHIEF JUSTICE held the vote bad.

JOSHUA RUPERT'S VOTE.

Joshua Rupert, called as to his own vote. It appeared on the evidence of the voter that he voted on part of Lot No. 6, 8th Concession, Osnabruck. Did not own it; his father-in-law did. Had occupied it for five years, paying rent to his father-in-law. Lease expired in November last. Left it about a year ago—on first of last April. After he left, it was let by his father-in-law, with his consent, to a man named Stewart, for a larger sum than he paid, and the father-in-law paid him the extra rent. Was a witness to the lease to Stewart, which was dated 28th March, 1870.

On cross-examination he said that it was agreed at the time of the lease to Stewart that the father-in-law should pay him, the voter, the increased rent, which he did.

RICHARDS, C. J.—I think after the surrender by the lease, to which he was a subscribing witness, he ceased to be a tenant. I am of opinion that the party must have the interest that qualifies him at the time of the last final revision. If he has it then, though not at the time of the election, he could properly vote if he were still a resident of the electoral division, but not unless he had the interest at the time of the revision of the roll. The roll was completed 30th March, two days after the new lease. I think the vote bad.

WILLIAM J. GOLLINGER'S VOTE.

George M. Gollinger, called on the vote of *Wm. J. Gollinger*: I made a deed to Wm. J. Gollinger of east half 31, fifth Concession, Osnabruck. It was made on or about 12th

September, 1870. There was a verbal agreement between him and me about 10th or 12th January, 1870. I was to give him the property. He left home and went to Wisconsin a few days before the holidays of 1869. About 10th January I sent him word if he would come back I would give him a deed of this lot; he came back immediately with the person by whom I sent the message. He was not then married. In September I made him the deed. We had some understanding about it before I made the deed. My son William got the proceeds of the place wholly and solely. I never got a fraction of the proceeds of this.

Cross-examined: We had three farms. We worked together. It was understood he was to have the produce of this farm to himself separately. This was the understanding between us in January, 1870. His share was put by itself, and kept separate from the rest. I worked 100 acres in the 7th Concession, and 50 acres in the 4th Concession also. Of these he had no share. We lived together at that time in the dwelling on this lot, until I gave him the deed. When I gave him the deed I was to leave. It was his privilege to let me remain. I had no management of this part. I did on the others, but let him do as he liked about this. I think my son was twenty-three years old in May or June. This understanding was not varied in any way after. It was part of the understanding that he was to have control of the place last summer. I suppose he went away because he wanted some property and I would not give it to him, but I changed my mind.

Re-examined: When he came back the agreement was that if he would stay at home and work the farm, I would give him a deed at any time he chose to ask for it. He would rather I should stay with him and give him a deed, so that he could have control. I would rather have control myself, and so I would not stay there. He was anxious for the deed, and so I gave it to him. I thought he would have been willing I should stay there if I would

give him the deed. I would prefer to stay elsewhere. I did not have any control. I never wished to stay there from the time I made the verbal bargain. His own hand worked it. I gave him a team, span of horses, for stock farming in September. I promised that in January, and transferred it in September. I told him I would give him seed to sow the place. I promised him no help. I helped him some. He did not pay me for his board, nor did I pay him for the rent of the house. The teams pastured on the place. His lot and mine remained together, not separated by fences. I could not tell how many bushels of grain I gave him that year. He did not promise to work for me. He worked as before—beginning at one field and finishing that, and then at another, and so on, as before; but this was upon an understanding. In September I went to a lot I had in the 7th Concession. He remained on the lot. I gave him the deed and property I promised him, and the cattle, and I went to the 7th Concession. Until he got the deed it was understood he was to go and work the farm—the east half of 31—if he should think proper. I was to give him a span of horses, waggon, harrow, four cows, six sheep, four hogs, and two pigs, and he was to have one half of the house furniture. He was to have these at any time he wanted. This was to be done at the same time with the deed, and at the time of the deed I did give them to him; he went on then under these terms, and went to work. He never said he wanted them until September. He took possession of them in January—of the horses and cattle, and these things. We never drove them off. I pointed out the four cows and the horses, and he took possession of them then. He was to get six sheep out of the flock. He was to have four of the hogs in the fall. He attended to these horses himself, and my son to the other team. He groomed and fed them as his own. I said to him in the spring, if he would help us to put in a crop in the other land, we would help him; he agreed to do so, and we went and did it. There is only one barn on 31; it was on his part. There

were no crops to mine ; the stuff was put into the barn on the place as before. He took control of it after, and used it. I had nothing to do with it after. I did not take anything off the place since or before.

RICHARDS, C. J.—I think this vote good, according to the rule we have acted on.

WILLIAM PLACE'S VOTE.

William Place, called as to his own vote. It appeared from the evidence of the witness that he was informed by his mother he was born in Ogdensburgh, in the United States. Both father and mother were born in Canada. He left Ogdensburgh when he was nine months old, came to Canada, and had resided in Canada ever since.

F. H. Shaver, called as to same vote. Witness was cousin of the voter. Knew him and his family. The voter's grandfather came originally from the United States. Drew land from Government, as did also voter's father as a U. E. Loyalist. Understood that the voter was born in Ogdensburgh. The father of the voter moved to Ogdensburgh about three months before the voter was born.

RICHARDS, C. J., held the vote good.

The Court was then adjourned; and on the reassembling of the Court (12th Sept., 1871) it was found that both parties appeared to have an equality of votes on the scrutiny.

The CHIEF JUSTICE thereupon declared the election void, and made the following special report on the case :

"I think it my duty to make a special report in relation to the proceedings before me on the trial of this Election Petition.

"The trial commenced on Monday, the 12th June, and continued during the week. A large number of witnesses was in attendance. It became necessary to adjourn the proceedings until the 12th September ; on which day the Court again met at Cornwall.

"Immediately after the opening of the Court it was admitted that [three votes] were bad, and should be struck

off from the votes polled for Mr. Bethune; making on the whole 40 votes that had to be struck off from the 700 who voted for Mr. Bethune, leaving for him 660 votes. And Mr. Colquhoun's votes numbered 705, and there have been struck off of these 45 as bad votes, showing 660 votes for him, thus leaving an equality of votes; and the parties agreed not to proceed further with the scrutiny.

"The charge of corrupt practices against the petitioner was abandoned, and no such charge was made against the respondent in the petition. The petitioner then offered himself for personal examination as to corrupt practices. I did not see any reason for examining petitioner or respondent.

"Both petitioner and respondent agreed that it was best for the interest of all parties that the case should be disposed of by my determining the election void, as was proper to do when there was an equality of votes. (1 Roe, 804; 1 Peckwell, 504; Chambers' Dictionary of Elections, 228).

"The number of votes to be inquired into on either side on the objection taken to them, was great, the witnesses were very numerous, and the expense of their attendance such that both parties felt that it would be less burdensome to themselves, and the electors even to have a new election than to continue that inquiry, which would likely be procrastinated for two weeks.

"I was not prepared to dissent from these views, and saw no reason why the parties should not be allowed to carry them out.

"Neither of the parties asked for the costs of these proceedings.

"I adjudged and returned that there was an equality of votes as between the petitioner and the respondent.

"It was agreed between the parties that a new writ might be issued by the House, and I finally determined, as already reported, that the said William Colquhoun was not duly elected, in this that it then appeared there was

an equality of votes between him and the said petitioner, and therefore the said election was void.

“I would respectfully submit for the consideration of the Legislature whether the law should not be so amended that the certified List of Voters, after it has been finally revised, should be considered as establishing the right of the elector to vote, at the time of the revision ; and that the only matter, as to the right of the elector to vote, that should be inquired into before the Rota Judges, on a scrutiny, should be such as might arise after the filing of the Revised List of Voters. And if it is thought the present mode of revising the list is not the best for preventing fraud, that some other mode should be devised by the Legislature in their wisdom for that purpose.

“The present system of investigating the qualification of voters on a scrutiny before the Court is ruinously expensive to the parties, and may be very inconvenient to the electors who are required to attend the Court for that purpose.

“In consequence of the inquiry being made at one place as to all the disputed votes that have been polled at the election, it becomes necessary for a great many of the electors to attend so that the trial may not be delayed for want of witnesses, and of course, much time is lost in consequence.

“Whereas the Court before which the revision of the list is to be had, might avoid the inconvenience by regulating its sittings as to the season of the year, and fixing of the days on which the Voters' List of any particular township, or division, was to be revised ; and in this way would require only the attendance of a few persons, and at a time and at the season most favorable for them.”

(5 *Journal Legis. Assem.*, 1871-2, p. 6.)

PRINCE EDWARD.

BEFORE CHIEF JUSTICE RICHARDS.

PICTON, 27th September, 1871.

WM. ANDERSON, *Petitioner*, v. GIDEON STRIKER, *Respondent*.
Right to attack Candidate-Petitioner's qualification—Hiring of Teams by Agents.

The respondent, on the opening of the case, charged that the petitioner was a candidate at the election, and as such candidate was guilty of corrupt practices, and therefore disqualified to be a petitioner. The Chief Justice, without deciding whether the respondent had the right to attack the qualification of the petitioner, allowed the evidence to be given, but *Held* the same to be insufficient.

On the admission of the respondent's counsel the election was avoided, on the ground that agents of the respondent had, during the election, hired and paid for teams to convey voters to the polls.

The petition contained the usual allegations of bribery, etc.

Mr. J. Hillyard Cameron, Q.C., for petitioner.

Mr. Bethune, *Mr. J. K. Kerr*, and *Mr. Allison*, for respondent.

At the opening of the case, counsel for the respondent contended that they had a right to contest the petitioner's qualification, and to show that he was disqualified from being a candidate by being guilty of corrupt practices by himself and his agents; citing the *Youghall case*, 21 L. T. N. S., 306.

Counsel for the petitioner contended that though a petitioner might be disqualified as a voter, and disqualified to be elected, yet the objection now urged cannot apply to a candidate. *Leigh and Le Marchant's Election Law*, 102. A bribed voter is disqualified by Common Law. A party disqualified by statute from being elected is not disqualified from petitioning as a candidate. If the application now made had applied to the petitioner as a voter, the petitioner might have asked that some one else should be allowed to petition, or be substituted. The charge is against the petitioner as a candidate, and the statute works no disqualification as such.

RICHARDS J. C.—I do not feel disposed to decide on the narrow ground that a party may be qualified as a candidate who is incapable of being elected. I therefore prefer reserving this question to deciding it against the respondent. If the petitioner requires time to meet these charges, so suddenly brought against him, I will probably give him further time.

Evidence was then given on the charge of bribery against the petitioner, after which,

The CHIEF JUSTICE held that the evidence failed to establish the charge.

Counsel for the petitioner then proposed to adduce evidence that the agents of the respondent had paid for conveying voters to the polls.

Counsel for the respondent admitted that the hiring of teams by agents of the respondent, to convey voters to the polls, had taken place during the election without the knowledge of the respondent. The respondent was then examined, and proved that he had no personal participation in such or any other illegal acts. At the conclusion of his evidence judgment was given as follows :

RICHARDS, C. J.—I am of opinion that the corrupt practices relied on by the petitioner, as above stated, and admitted by the respondent, are corrupt practices within the meaning of the Controverted Elections Act of 1871, and that the same prevailed at this election, and that the election is therefore void ; such practices, in my judgment, being of a character to affect the result of the election.

It has not been proved before me that any corrupt practices have been committed with the knowledge and consent of either of the candidates at such election.

The names of persons who have committed corrupt practices have not been given in. I am not prepared to say that corrupt practices extensively prevailed at the said election.

Costs followed the result.

(5 *Journal Legis. Assem.*, 1871-2, p. 7.)

WELLAND.

BEFORE MR. VICE-CHANCELLOR STRONG.

WELLAND, 9th October, 1871.

JAMES HUGH BEATTY, *Petitioner*, v. JAMES GEORGE
CURRIE, *Respondent*.*Amendment of Particulars—Evidences of Agency—Treating without
Corrupt Intent—Costs.*

At the trial of the petition, an amendment of the particulars as to corrupt practices will be allowed; and if the respondent is prejudiced by the surprise, terms may be imposed.

To sustain the relation of agency, the petitioner must show some recognition by the candidate of a voluntary agent's services.

The *Westminster case* (1 O'M. & H., 89) as to agency followed.

Treating, when done in compliance with a custom prevalent in the country and without any corrupt intent, will not avoid an election.

The petition was dismissed, and, by consent of the respondent, without costs.

The petition contained the usual charges of corrupt practices, etc.

Mr. J. Hillyard Cameron, Q.C., and Mr. Baxter, for petitioner.

The Respondent in person, *Mr. C. E. Hamilton, and Mr. A. G. Hill*, for respondent.

The evidence affecting the charges on which the learned Judge gave judgment, was as follows:

Sylvester Neelon: I live at St. Catharines. Am a voter in Welland. I canvassed for Mr. Currie at the last election. To the best of my knowledge I received a note from Mr. Currie asking me to solicit a couple of persons to vote for him. I spent no money on account of the election. I went into a tavern at Port Colborne on polling day. I cannot give the name of the tavern.

The Respondent objected. No charge as to this witness is in the particulars. The names of persons who are charged with having treated voters are given, but this witness is not among them.

Mr. Cameron.—There is a general allegation of corrupt practices in the petition, and this is a corrupt practice. By the 66th section spirituous liquors are prohibited from being sold or given on polling day, and all prohibited acts are corrupt practices.

The VICE-CHANCELLOR.—The name of this witness is not in the particulars, but the petitioner is entitled to an amendment adding it. If the respondent is prejudiced by the surprise, terms may be imposed.

The amendment was then made.

Witness continued: I treated several of Beatty's men there. I paid something for the treat. I also treated a few persons at a small shop in Humberstone. I think also I had something to drink in a tavern in Welland on polling day. I cannot say whether I treated, or other persons treated me, on the last occasion.

William O. Cowan: I live in Thorold. I voted for Mr. Currie. There were a few of us who undertook to look up voters' lists and canvass for Mr. Currie. I never met Mr. Currie at Thorold. I saw him frequently at St. Catharines during the canvass and spoke of the election. We met at Mr. Munro's several times about the election. We spent no money that I know of, nor was there any treating. I asked one Fair to vote for Mr. Currie. I held out no inducement or promise to him. On one occasion previous to the election I treated him. I asked him, if he would not vote for Currie not to vote against him. I say positively I held out no inducement to Fair. There has not been a meeting of the committee since the election.

Cross-examined: There was never any committee; no organization. We did not communicate with Mr. Currie, nor make him aware of our proceedings.

Robert Edsley: I live in Thorold, and voted for respondent. I was not a member of any committee. I never spoke to Mr. Currie during the election. I canvassed only three persons. I met some others who looked over voters' lists. I met them casually on the street. I canvassed Sanders,

Galbraith and Pew, and no others. I paid and promised no money. I said to these three men, if there was any money forthcoming they would get their share of it. Mr. Cowan met me and said if I could do anything with these parties and get them to vote, it would be all right. I said to Mr. Cowan and Mr. Bann that if stamps were not used the election would go wrong. Mr. Bann and Mr. Cowan said that Mr. Currie would not spend a cent. The way I came to offer Galbraith money was, he said he guessed he could not vote as the other side had promised him \$20. I told him to come along and it would be all right. The persons named voted for Currie.

William O. Cowan, recalled : Eddy met me on the street and told me of the three men ; he said they could be got. I merely told Eddy that he might tell the three men mentioned by him that if they would vote they should have money if we got any money. I did this on my own behalf.

James Munro : I live at Thorold, and voted for Mr. Currie. I was a member of the convention which brought out Mr. Currie. There were evening meetings at my store of the friends of Mr. Currie, with a view to promote his election. Mr. Cowan was at these meetings. I think it very likely something was said about expenses. There was no expenditure of money to my knowledge. I saw Mr. Currie at Thorold at a public meeting in the drill shed. I canvassed a little. I don't think there were more than two or three meetings at my store. I stood at the poll at Thorold ; I had no authority from Mr. Currie.

Cross-examined : I never saw Mr. Currie from the time of the convention meeting until the nomination. There was a resolution of the convention pledging the members of it to support Mr. Currie.

After the examination of other witnesses,

Mr. Cameron stated that the evidence he had to offer would add nothing to what had already been given. With the exception of the evidence of Neelon and Eddy, there was nothing to affect the election. The questions

to be considered were whether agency had been proved, and secondly, whether the acts of the supposed agents had been such as would avoid the election. He thought it would be fair and proper that the petition should be proceeded with no further.

The VICE-CHANCELLOR.—“That amounts to withdrawing the petition, and I see by the Act I have jurisdiction to allow that.” In giving judgment, the learned Judge said there had been no sufficient proof of agency, and referred to the *Westminster case* in England (1 O.M. & H., 89), and to the dictum of the Judge who tried the case, to the effect that some recognition by the candidate of a voluntary agent’s services must be proved. He held that here agency had not been proved. The treating by Neelon he held did not come within the Act; it was evidently done in compliance with a custom prevalent in the country when friends meet. There must be, in cases under the Election Law, a corrupt intent shown in order to affect the election. One glass of liquor, as had been said in England, given with a view of influencing a vote, would avoid the election.

The petition was dismissed, and, by consent of the respondent, without costs, as he had subpœnaed no witnesses.

(5 *Journal Legis. Assem.*, 1871-2, p. 12.)

NORTH SIMCOE.

BEFORE MR. VICE-CHANCELLOR STRONG.

BARRIE, 16th October, 1871.

JONATHAN SISSONS, *Petitioner*, v. WILLIAM D. ARDAGH,
Respondent.

*Hiring Railway Train to convey Voters to the Election—Agency—
Recriminatory Case.*

Held, that the hiring by an agent of the respondent of a railway train to convey voters to and from places along the line of railway where they could vote, was a payment of the travelling expenses of voters in going to and from the election, within the meaning of sec. 71 of 32 Vic., c. 21, and was a corrupt practice, and avoided the election.

Where a charge of corrupt practices by way of a recriminatory case is alleged by a respondent against a petitioner, it may be reserved until the conclusion of the petitioner's case.

The petition contained the usual allegations of bribery and corrupt practices, and the hiring of teams and of a railway train, to convey voters to and from the election.

Mr. Bethune and Mr. J. K. Kerr, for petitioner.

Mr. D'Alton McCarthy for respondent.

Counsel for the respondent objected that petitioner was disqualified on the ground of bribery, and produced a notice served on the petitioner, calling upon him to appear, in order that evidence might be given to prove him guilty of bribery.

The VICE-CHANCELLOR said he would reserve the question until the conclusion of the petitioner's case.

Evidence of the payment of travelling expenses of voters going to and from the election was as follows:

William Davis Ardagh, Respondent : "I was a candidate at the last election for North Simcoe. I knew that a special train on the Northern Railway had been hired to bring voters in my interest and of the other candidates, down the line of railway. A share of the expense of this train was paid by my partner, John Ardagh. This may have been charged to me. The amount was \$200 or \$180. I suppose my partner expected that I should pay it. The agreement for this train was made between Mr. McCarthy or Mr. John Ardagh, on my behalf, Mr. Morrison, for Mr. Lount, and Mr. Thompson, for Mr. Cook. I consider it optional with myself whether I shall repay the amount incurred for this train or not. I am satisfied the election was not in any way affected by this train. I have not yet determined whether I will repay my partner what he advanced on account of the election or not. There was a committee for my election, as I knew at the time, at Barrie. Mr. D'Alton McCarthy was the chairman of this committee. Mr. John

Ardagh was, I knew, taking an interest in my election. He went out and held one or two meetings on my behalf."

The VICE-CHANCELLOR, on this evidence, held that the election was void, on the ground that persons acting on behalf of the respondent had paid the travelling expenses of divers electors in going to and returning from the election.

Costs were ordered to be paid by respondent, so far as the same related to the avoidance of the election.

(5 *Journal Legis. Assem.*, 1871-2, p. 12.)

SOUTH GREY.

BEFORE MR. VICE-CHANCELLOR MOWAT.

OWEN SOUND, 12 to 14 September ; 7 to 8 November, 1871.

ALEXANDER HUNTER, *Petitioner*, v. ABRAM WILLIAM
LAUDER, *Respondent*.

*Controverted Elections Acts—Adjournment—Power of Judge to Change
Place of Hearing—Evidence of Bribery—Responsibility for Acts of
Agents and Sub-agents—Payment of Expenses of Voters—Treating—
Destroying Election Accounts—Costs.*

When a Rule of Court has been issued under the Controverted Elections Act, appointing a place for the trial not within the constituency the election for which is in question, the Judge by whom the petition is being tried, has no power to adjourn, for the further hearing of the cause, from the place named in the Rule of Court to a place within such constituency.

Reasonable refreshments furnished *bonâ fide* to committees promoting the election are not illegal.

Where a charge of bribery is only the unaccepted offer of a bribe, the evidence must be more exact than that required to prove a bribe actually given or accepted.

The respondent entrusted about \$700 to an agent for election purposes without having supervised the expenditure. *Held*, that this did not make him personally a party within 34 Vic., cap. 3, sec. 46, to every illegal application of the money by the agent, or by those who received money from him. But if a very excessive sum had been so entrusted to the agent, the presumption of a corrupt purpose might have been reasonable.

When a candidate puts money into the hands of his agent, and exercises no supervision over the way in which the agent is spending that money, but accredits and trusts him, and leaves him the power of spending the money, although he may have given directions that none of the money should be improperly spent, there is such an agency established that the candidate is liable to the fullest extent not only for what that agent may do, but also for what all those whom that agent employs may do.

The payment of a voter's expenses in going to the poll is illegal, as such, and a corrupt practice, even though the payment may not have been intended as a bribe.

The distribution of spirituous liquor on the polling day, with the object of promoting the election of a candidate, will make his election void.

When all the accounts and records of an election are intentionally destroyed by the respondent's agent, even if the case be stripped of all other circumstances, the strongest conclusions will be drawn against the respondent, and every presumption will be made against the legality of the acts concealed by such conduct.

Where bribery by an agent is proved, costs follow the event, even though personal charges made against the respondent have not been proved, there having been no additional expense occasioned to the respondent by such personal charges.

The petition contained the usual charges of corrupt practices.

Mr. J. K. Kerr for the petitioner.

The *Respondent* in person.

By a rule of Court the case was tried at Owen Sound, a place not within the electoral division. Upon an adjournment the question was raised whether the presiding judge could adjourn from Owen Sound to a place within the electoral division, for the further hearing of the case.

The VICE-CHANCELLOR held that he had no power to grant such an adjournment, as by so doing he would in effect override a rule of Court.

Offers of bribes were said to have been made to one *Alexander McKechnie* and one *James Black*, who were examined as witnesses. The evidence of both was contradicted by Mr. Lauder on his own oath. McKechnie had actively supported the respondent at the previous election for the riding, and Mr. Lauder seemed to have expected a like support from him at the election now in question. In this expectation Mr. Lauder (according to McKechnie's evidence) asked him to "come into our committee to-night," and added, "we'll furnish you with plenty of means." McKechnie did not go to the committee, and did not give Mr. Lauder his support. He deposed that he considered Mr. Lauder's observation "in the light of bribing" him.

James Black deposed that he had heard that Mr. Lauder had a large sum of money to spend on the election; that he applied to Mr. Lauder for some of it; that he offered to work, if paid; and that he (the witness) said that money would "do good" in his section; but he also deposed that Mr. Lauder would not give him any money; said it would be illegal to do so, and made him no offer. The witness added that Mr. Lauder told him to "go to Perry." He stated that he did go to Mr. Perry, and that Mr. Perry said he had no money. And it further appeared that the witness in fact got no money either from Mr. Lauder or from Mr. Perry, and that he in consequence voted for Mr. McFayden, the opposing candidate.

As to the treating, it was proved that on various occasions Mr. Lauder expressly forbade all treating as well as everything else of an illegal kind being done to promote his election. But it appeared that on the nomination day, at an election meeting held after the nomination, in the Orange Hall in the village of Durham, refreshments were brought into the room by one Woodland, and were partaken of by the persons present. Mr. Lauder deposed that he knew nothing of these refreshments before they were brought in; that he told the parties bringing them in to be careful, and that they might be "coming too near the law." He further deposed that he did not pay for these refreshments, and that no account for them had been rendered to him. There was no evidence to the contrary of what Mr. Lauder thus deposed. There was, however, evidence that he did pay for refreshments provided for various committees at their election meetings. The central committee at Durham consisted of about nine persons; the local committees did not seem to have respectively comprised so many. There was evidence, also, that on some other occasions there was a general treating of electors at the close of public meetings of electors which Mr. Lauder had been addressing, and while he was in the house where the treating took place. There was no other evidence of knowledge or consent. One

Thomas Smith swore that after a meeting held at a tavern in Egremont, which meeting had been addressed by Mr. Lauder, he had given a treat for which he paid \$5 ; that some time after the treat he received \$20 from Mr. Lauder ; that he had paid the \$5 at the time the treat was given, and before he received the \$20 ; and that the treat was given on his own responsibility, and Mr. Lauder was no party to it ; that Mr. Lauder gave the \$20 to pay for the use of the room in which the meeting was held, for his (Mr. Lauder's) own personal expenses at the tavern, and for refreshments which had been furnished for a committee which held a meeting at the tavern that evening. It was not shown that Mr. Lauder was aware that Smith had treated when he gave him the \$20. Smith also swore that he had expended more than \$20 for refreshments for committee-men, for feed for their horses, etc., in addition to the \$5 paid for the treat.

The corrupt practices said to have been committed by Mr. Lauder's agents were chiefly these: 1, bribery ; 2, treating meetings of electors ; and 3, giving spirituous liquor during the polling day.

In regard to bribery, the principal instances proved were committed by one George Privat. Privat was the principal canvasser for Mr. Lauder in that part of the township of Normanby called the "Old Survey." Privat was called on by one William Scott and one Charles Grant, and was either asked to go on the committee (for securing Mr. Lauder's election), or was told by Scott that he had been put on the committee. The former was his own recollection, the latter was Grant's recollection of what had occurred. He sent word to Durham by these persons "that it would take \$100 to work up the Old Survey." In reply, he was told that so much could not be given. He was told also to go to one Meddaugh, whom he knew. He went to Meddaugh accordingly, and at Meddaugh's instance Mr. Perry gave him \$50. Privat "was not told what he was to do with the money," but he received it "to spend on the election." He went into the canvass,

and in the course of it he committed the alleged acts of bribery.

The alleged bribery was this: it appeared from his own evidence that after conversing with certain named voters severally, a day or two before the election, he dropped money for them on the ground, and then walked away; that in each case he meant this money to be picked up by the voter; that his chief or only purpose in this was to secure the voter's support for Mr. Lauder; and that he dropped the money instead of handing it to the voter, because he imagined that this indirect mode would enable the voter, if sworn, to say that he had received no money. Meddaugh, to whom he referred Privat as to money, was another member of the central committee. Perry, who gave Privat the money, was a distant relation of Mr. Lauder's; he was the secretary of the central committee; kept all accounts; was the treasurer for the contest, and received from Mr. Lauder, and disbursed most of the funds which Mr. Lauder from time to time supplied for the purposes of the election. Mr. Lauder stated in his evidence that he had "refused to have anything to do with committees" The only instructions which he appeared to have given with reference to the expenditure of the money were those implied in his forbidding any treating, hiring of teams, or paying for votes. Two of these voters were examined, and proved the finding of the money which Privat had dropped. Privat stated that he had some talk with the voters referred to about their doing some ploughing for him.

[The VICE-CHANCELLOR considered that if this part of his evidence was correct, the suggestion about ploughing was, like the dropping of the money, a colorable pretence by which it was intended to evade the law.]

William Scott, who solicited Privat to take part in the active work of the election, was a member of the central committee. He "went round to the different places and brought in returns, sometimes written and sometimes verbal, of how the other committees were getting on."

Mr. Perry paid out about \$1,700 for the purposes of the election, and after the election he claimed credit for that amount from Mr. Lauder. Mr. Lauder allowed and settled \$625 only, but objected to the balance as unnecessarily spent (not, he said, as illegally spent), and had not yet paid it. Perry swore that he, notwithstanding, expected to be paid, though he had not yet received any promise to that effect.

It appeared that the letters and accounts with reference to the election had been destroyed. Mr. Lauder stated that he had destroyed all the letters written to him, and had kept no copies of the letters written by him, in which reference was made to money matters; and Perry swore that he had destroyed all papers connected with the election about ten days after it took place, including a list of the members of the central committee, a record of their proceedings, and an account of moneys expended.

After the argument of Counsel on the personal charges of bribery against the respondent, the following judgment was delivered :

MOWAT, V.-C.—I am satisfied that no case has been made out against Mr. Lauder personally.

With regard to the Orange Hall meeting, the weight of evidence goes to show that it was a meeting of committees; and besides, no refreshments for the meeting were ordered or furnished by Mr. Lauder, or paid for, or promised to be paid for, by him. I do not think that reasonable refreshments furnished *bonâ fide* to committees are illegal.

As to the alleged treating at Normanby, Smith's evidence is unsatisfactory, but there is no ground for believing that Mr. Lauder knew that Smith had treated when he gave him the money.

The case of McKechnie, as stated by himself, is not sufficient to prove Mr. Lauder guilty. McKechnie states that Mr. Lauder said, "come over to our committee to-night, and you shall be furnished with plenty of means,"

and McKechnie swears that he considered this an offer of a bribe to him. He did not go to the meeting, and no other conversation on this point took place. Now, where the charge is only the unaccepted offer of a bribe, the evidence must be more exact than is required to prove a bribe actually given or accepted. A very little difference in the language employed might make a great difference in the intention of the supposed offer. Where a conversation is not followed by the act spoken of, we are not, unnecessarily, to presume a bad intention. In an election, means are required for legitimate purposes; and I am not at liberty to infer that Mr. Lauder meant "I shall furnish you with plenty of means for illegal purposes."

The case of Black is weaker than that of McKechnie. He says: "I heard Mr. Lauder had a large amount of money for election purposes, and I asked him for some. He refused it, and said it was illegal, and told me to go to Perry." Black applied to Perry, and Perry neither gave him money nor the promise of any. It would be preposterous to say judicially on this evidence that Mr. Lauder or Mr. Perry offered or promised to give the money which they both refused to give. Both McKechnie and Black voted against Mr. Lauder.

Next it is said that Mr. Lauder entrusted large sums to Perry; that he should have supervised the expenditure, and that his failure to do so makes him personally a party within section 46 of the Act of 1871 (34 Vic., c. 3) to every illegal application of money by Perry, or by those who received money from Perry. The sum which Mr. Lauder gave was under \$700; there is no evidence before me that that sum was an excessive one for legitimate expenses; and a certain amount of discretion must be placed in a candidate's agents. If he had put \$7,000 into Perry's hands, the argument of a corrupt purpose might have been reasonable. The facts do not suggest to my mind any idea that Mr. Lauder intended his money to be employed illegally.

For these reasons I think the personal charges not made out.

Counsel then addressed the Court as to bribery by agents, after which judgment was given as follows :

MOWAT, V. C.—I may dispose of this case on the ground of the illegality of Privat's acts. He was asked by Scott to assist in the canvass, and was referred to Durham for money. He went there, and got the money from Perry, through the intervention of Meddaugh. These three persons were the members of, or connected with, the committee at Durham. Mr. Lauder argues that it does not appear that Perry paid the money with the concurrence of the committee ; but there is no evidence that Mr. Lauder had said or done anything to create a necessity for this concurrence, and there is evidence to the contrary. Perry received no instructions as to the mode of the distribution of the money. That was left to his discretion ; and Mr. Lauder in his evidence distinctly repudiated all committees, and stated that he had made his payments through Perry. But even if Perry had been directed to carry out the instructions of the committee, and had disobeyed, he being the treasurer for the election, the secretary of the committee, and the confidential agent of the candidate, his acts would still bind the candidate. This is laid down in the *Staleybridge case* (1 O'M. & H., 69). There Mr. Justice Willes said : " I have already in the *Bewdley case* (*Ib.* 18) had occasion to decide this much. There it appeared that the sitting member had put a sum of money into the hands of his agent, and that he exercised no supervision over the way in which that agent was spending that money ; that he had given him directions, and I thought really intended, that none of that money should be improperly spent ; but that he had accredited and trusted his agent, and left him the power of spending the money, and I came to the conclusion upon that, that there was such an agency established as that the

sitting member was responsible to the fullest extent, not only for what that agent might do, but for all the people whom that agent employed might do: in short, making that agent, as far as that matter was concerned, himself, and being responsible for his acts. I see no reason to doubt at all that that is perfectly correct."

This is no new law: it has been the rule ever since there was a record of the law of Parliament; it is founded on reason, and if another rule were adopted, a candidate might give his agent money, take the benefit of the expenditure, and afterwards say that he did not authorize the mode in which the money had been spent, claim freedom from responsibility in respect of the use made of it, and thus evade the whole law against corrupt practices. I cannot hold otherwise in this instance (in which there is no dispute as to the facts) than that Mr. Lauder is responsible for the acts of Privat.

As to these acts: Privat talked to certain voters about the election, and dropped the money for them, so (as he explains it) that they might be able to swear that they had received no money. To constitute the offence, it is not necessary that voters should accept an offered bribe. The two voters called confirm all that was necessary in Privat's evidence to make out the charge against him. His purpose was to secure the votes by means of this money. I have no alternative but to hold that Privat has been guilty of such acts as agent as render the election void.

So far the case is free from doubt.

As to some other points, it may be proper that, for the information of parties concerned, I should intimate the impression I have formed.

As to Ray, I do not consider the \$2 given to him to have been a bribe, as distinguished from a payment for the expenses of himself and the other voters who were going with him to the polls; but the payment would be illegal either way, according to the decision of Chief Justice Richards at Picton, (a) and of my brother Strong at Barrie. (b).

(a) Prince Edward case, *ante* p. 45.

(b) North Simcoe case, *ante* p. 50.

As to the treating by agents of meetings of electors, in order to promote the election, if the validity of the election had in my view depended on that question, I would, in consequence of the decision in the *Glengarry case*, (a) have reserved the point for the opinion of the Court of Queen's Bench.

If it had been necessary for me to decide as to the effect of distributing liquor on the polling day, I do not at present see how I could avoid holding that the object was the promotion of the election of Mr. Lauder, and that the election was void on that ground.

With regard to the destruction of the accounts and papers, I consider the matter a very grave one. If the case were stripped of all other circumstances but the destruction of the records of the committee and the accounts, by a person holding the position of Mr. Perry in the election, I incline at present to think that it would be my duty to draw the strongest possible conclusions against the respondent; and that I should make every presumption against the legality of the acts which were concealed by such conduct. The only safe course for an honest candidate to pursue is to have all papers preserved, and to be able to show how all the money was expended. For such a candidate, or any agent of his, to be content with saying he does not know how the money is spent, is very unwise.

But I pronounce no decision on these points, as the conduct of Privat has rendered it unnecessary. On the ground of Privat's acts I declare the election void, and I shall report that it was not established to my satisfaction that corrupt acts were committed by or with the knowledge of Mr. Lauder personally.

The English practice is that costs follow the event where bribery by an agent is proved, and I follow that practice.

The *Respondent* then urged that there should be an apportionment of the costs, as according to the judgment

(a) *Ante* p. 8.

of the Court, the petitioner had been successful on some only of the issues.

The VICE-CHANCELLOR said that there did not appear to have been any increase of the costs on account of the issues on which the petitioner had failed; that his observations as to the destruction of papers were to be borne in mind, and that, under all the circumstances, he did not think there should be any apportionment.

(5 *Journal Legis. Assem.*, 1871-2, p. 13.)

NORTH YORK.

BEFORE MR. JUSTICE GALT.

NEWMARKET, 14th to 17th November, 1871.

NELSON GORHAM *et al.*, *Petitioners*, v. ALFRED BOULTBEE,
Respondent.

*“Illegal and Prohibited Acts.”—Treating—Selling Liquor on
Polling Day—Agency—Costs—Special Case.*

Held, 1.—That “illegal and prohibited acts relating to elections,” in the definition of corrupt practices in the Controverted Elections Act, 1871, were confined to bribery, hiring of teams, and undue influence, as defined by secs. 67 to 74 of the Election Act of 1868.

2.—That violations of section 61 (treating at meetings) and section 66 (giving or selling liquor at taverns on polling day) are not corrupt practices within the meaning of the said Acts, unless committed in order to influence voters at the election complained of.

Evidence was given to show that certain parties had attended meetings with the respondent and canvassed for him, and had performed other acts of alleged agency, as set out in the evidence.

Held, that the acts of alleged agency relied on in the evidence were not sufficient to constitute such parties the agents of the respondent.

The petition nevertheless was dismissed without costs.

A special case may be reserved for the opinion of the Court of Queen’s Bench only when the Judge presiding at the election trial has a serious doubt as to what the law is; or believed that the Court might entertain a different opinion from that of the election judge.

The petition was in the usual form as to corrupt practices, and claimed the seat for the defeated candidate. The votes at the election were: For the respondent, 1,306; for the Hon. John McMurrich, 1,301; majority for respondent, 5.

Mr. K. Mackenzie, Q. C., Mr. Bethune, and Mr. McMurrich, for petitioner.

Dr. McMichael and Mr. D'Arcy Boulton, for respondent.

The evidence as to agency and treating was as follows :

David C. Burke : I live at Newmarket ; am a partner of respondent. I took part in the last election for Mr. Boulton ; I canvassed for him. I went with him when he was holding meetings ; I was not a member of his committee. I know a place called Gum Swamp ; I went through there the night before the election. David Willoughby went with me. It was dark. We met parties on the road ; they all said they were going to vote for Boulton. I had some liquor with me, a few small bottles ; I bought them at Huggard's hotel ; I got it to treat my friends. I left them at the mill ; I think there was a dozen when I started. I stopped at Bellhaven ; it was a polling place, I got there about 11 or 12 p.m. Mr. Willoughby was with me. The bottles were left in the buggy ; they were in an open box. I took the liquor to drink myself, and to treat my friends. The bottles were taken from the buggy ; I missed them next day. I did not treat any person ; don't think I made any inquiry about the whiskey.

Archibald McVenn : I was bar-keeper in Hewett's hotel in March last. I remember the meeting of the 18th March. I heard it was a meeting of Boulton's friends. Saw Mr. Hogaboom there. I cannot say what they were talking about. I charged \$50 for the liquor ; that was the value of the liquor. I guessed at it. George Hogaboom ordered it. I did not tell him what I charged. I cannot say how often I served them with liquor. They were mostly village people ; some of them got a little drunk. I charged 5 cents a glass. I charged \$10 for the room. I did not try to keep an account of the glasses. I think there were \$40 worth of liquor drank. It was whiskey and beer and cigars ; there was drinking at the bar besides, which was not included. Mr. Hogaboom did not say who would pay for the liquor. I charged it to

him because he ordered it. Hogaboom did not engage the room.

John Hartray : I reside in Newmarket. I voted at the last election for Mr. Boulton. I was at the meeting on the 18th March. I do not know what the meeting was for. I went to hear the result of the canvass. It was a committee meeting. They were counting up the votes of the town in favor of Boulton. I had a glass of beer in the room. The meeting was suggested by Mr. Burke and Mr. Hogaboom. There was a number of Boulton's friends there. When I arrived at the meeting there was quite a number there.

James Hackett, M.D. : I am a voter; I voted for Mr. Boulton at the last election. I canvassed for Mr. Boulton. There was no regular committee to my knowledge. I occasionally got voters together to promote the election on my own responsibility. David Willoughby was, I suppose, one of Boulton's committee in North Gwillimbury. I saw a list of voters in Mr. Sheppard's possession, but I think Mr. Willoughby showed it to me.

Cross-examined : I do not know that Mr. Boulton appointed any person to act as a committee-man or canvasser. I was an independent canvasser. Mr. Boulton knew I was canvassing.

David Glover : I saw Mr. Boulton during the canvass. I supported him at the former election. I canvassed for him. George Hamilton and I were appointed a committee to canvass Gum Swamp school section; we were appointed upon the committee at the meeting at Bellhaven. David Willoughby was, I think, chairman of the committee; John Anderson was secretary. There was a large meeting; perhaps 30 or 40 were present. There was nothing to drink. There was another meeting at which I was not present.

David Sprague : There was a number of the people of North Gwillimbury met; I was one. David Willoughby and others were there. We supported Mr. Boulton. There were a number of other neighbors there. Mr.

Willoughby was chairman. There was no treasurer and no money. Mr Boulton had a meeting at Bellhaven before the nomination.

Cross-examined : Mr. Boulton had nothing to do with calling the first meeting. It was called for the purpose of ascertaining the feelings of the people.

James Cheney : I live in King. I voted for Mr. Boulton. I saw him in Newmarket after he became a candidate. I attended a meeting at the Royal hotel. There were a good many persons there. I suppose 20 or 30 persons were present. We met to arrange about the election. Mr. Boulton was present. Persons were appointed to canvass. I was to canvass on the south side of the township. Mr. Boulton was in and out. I spoke to him, not about the election. Mr. Morgan, Mr. Boulton's partner, was there.

Edward Morgan : I am partner with Mr. Boulton. The object of the meeting at the Royal hotel was to ascertain the views of the electors ; Hogaboom was there, but I am not positive ; Willoughby was there. I live at the hotel. I was in and out very often. I was not taking an interest in the election, except a natural desire to see Mr. Boulton elected. My going in and out had nothing to do with the election. I did not go to the meeting to see after the election ; it was simply curiosity. I did not know there was to be a meeting. I went to the hotel and I saw some enter, and I was told they were favorable to Mr. Boulton. They were talking of what they had done. It seemed a jollification. I think I had some beer. I made a few remarks. I acted as scrutineer at one of the polls. Mr. Boulton requested me to go there. I was at Street's tavern. I gave two or three persons there some liquor. I did not know them to be electors. I told the landlord it was illegal for him to keep open his bar, or to give or sell liquor, on election day. I will not swear I did not go behind the bar and take the liquor. I either did that or called for it. I was cold after my long drive. I think it was after this I was consulted.

George Hogaboom: I live at Newmarket. I was anxious for Mr. Boulton's election. I asked some men for their votes. I do not think I asked many. I went with Mr. Boulton to Aurora. I think he had a meeting there. I spoke to people about the election. The meeting was at the Town Hall. There was a tavern about a quarter of a mile distant; we put up our horse there. There were 50 or 60 persons present. There was no drink furnished there. I attended the meeting at Hewett's hotel, Newmarket; I ordered one drink. I told the bartender to bring in a drink for the crowd. I had no particular object. There were probably 50 there. There were 5 or 6 drinks ordered; I rather think Mr. Morgan ordered a drink. I did not engage the room. The meeting lasted about two hours; we were talking about the election. I was present at the meeting at the Royal hotel; I took no part in it. I think I talked to a good many about the election. I knew that some of them were leading supporters of Mr. Boulton. I did not act as scrutineer.

Cross-examined: I was not a member of any committee. I was not appointed in any way as an agent. I knew nothing of the meeting at Hewett's until I got there. Mr. Boulton was not present. I was the first person who ordered liquor there. I said that all who were not Boulton men were requested to leave the room, that it was a meeting of the friends of Mr. Boulton alone. We then began to discuss the prospects of the election.

Patrick McCutcheon: I reside in Vaughan. I voted at Nobleton. I saw Mr. Morgan there before the poll was open at Street's tavern. Mr. Street would not sell anything. Mr. Morgan said he would run the machine anyway. He went in behind the bar, took down the decanters, and treated 3 or 4 persons. He paid for it. He acted as scrutineer afterwards for Mr. Boulton.

David Willoughby: I live in North Gwillimbury. I was at a meeting at Huggard's. I made up my mind to support Mr. Boulton. There were probably 30 persons there; Mr. Boulton was there. There was no section

given me to canvass. I did canvass; I went through about half the township. I only wanted to know how they were going to vote. I did not keep any list; I made no report. I don't know that I was ever on a committee. There was some of us met at Bellhaven; I was appointed chairman, and Mr. Anderson secretary. There was a conversation among ourselves to ascertain how many would support Mr. Boulton. I was, during each day for about four days, making the tour of the township. I went principally alone; the last day I went with Mr. Burke. I got into the buggy and went with him. He was calling on the people about the election on behalf of Mr. Boulton. I was at the poll at Bellhaven. I think Mr. Burke was scrutineer. He had liquor with him. There may have been a dozen; I saw about half a dozen. I saw him give some of it to others. I did not see him give any of it on the day of the election. I took a little myself on the polling day. (*The witness here claimed a certificate under the statute*). I gave Mr. John Morton some, also John Ryner; it was after they had voted. I gave liquor to four in all. I do not know what became of the other bottles. I attended a meeting at Bellhaven and Ravenshoe; Mr. Boulton was present; it was held in a hall adjoining the tavern. There was a drink after the meeting.

Alfred Boulton, Respondent: I did not appoint any agents in this election. I had no committee appointed. David Burke was not employed by me in any way to forward the election. I remember him driving me through King and across to Whitchurch to address meetings I had called. I believe I stated to every meeting that I would have no agents. I did not go round canvassing. I appointed meetings and addressed them. I was present at the meeting at Huggard's. I had little or no organization for carrying on my election. I asked Mr. Morgan to go to Nobleton. I think there were 3 or 4 who offered to act as scrutineers; they are the only persons I appointed. I appointed no persons in North Gwillimbury.

Cross-examined: I may have seen drinking at some of the meetings; I furnished none; I did not treat. The meeting at Huggard's was, I think, called at my suggestion to see what my prospects were at the election. They were persons who were friendly to me. If those persons had not agreed to support me I do not think I should have come out; I relied on their support as one of the means by which I could carry my election. I believed what Burke could do he would do. I think Willoughby was at Huggard's.

After the argument of Counsel, the following judgment was delivered:

GALT, J.—I would not have the slightest objection to avoid the responsibility of sending this case to the Queen's Bench; but in that case I ought to do so only because I had a serious doubt as to what the law is; and I ought to be satisfied also that the Court would entertain a different opinion from mine; and in neither view can I hesitate to give judgment at present. The case has resolved itself into two points: first, the effect of the meeting at Hewitt's; and second, the treating on the polling day, and whether there was such a violation of the 61st and 66th sections respectively as would render the election void. (a) I must say I have a strong opinion that the illegal and prohibited acts, referred to in the definition of corrupt practices in the interpretation clause, in section 3 of the Controverted Elections Act, 34 Vic., c. 3, are confined to sections 67 to 74 inclusive. (b) The fact that undue influence and carrying voters were not sufficient to void the election under the previous Acts, enables me to find that these sections would exactly cover the

(a) 32 Vic., c. 21,—s. 61: No drink or other entertainment to be furnished to any meeting of electors assembled for the purpose of promoting the election; s. 66, all hotels, taverns, etc., to be closed on the polling day, and no spirituous or fermented drinks to be sold or given to any person on such day, within the electoral district. (See R. S. O., c. 10, ss. 151, 157).

(b) 32 Vic., c. 21,—ss. 67 and 68 define bribery; s. 69, election of candidate guilty of bribery void; s. 70, bribed votes void; s. 71, hiring of teams to convey electors to the poll illegal; s. 72, undue influence defined; s. 73, persons must give evidence, though the answers may criminate them; s. 74, contracts arising out of the elections void. (See R. S. O., c. 10, ss. 149, 150, 154, 155, 158, 163, 170, 176).

definition. It would be impossible to hold that every violation of the Act would be a corrupt practice. The 61st section is perfectly intelligible, when read with the heading "keeping the peace and good order at elections." Bearing in mind the object that heading points out, we can easily tell why the word "agent" is omitted: the evil is the same whether the candidate, or "any other person" gives the entertainment which has the effect of breaking the peace or good order at elections. The meeting at Hewitt's was a violation of that clause, and was called to promote the election of Mr. Boulton; I don't say who called it: according to law it was an illegal act to furnish the entertainment. So with the 66th section; every tavern, the statute says, shall be closed, and this section is consistent also with the view I have expressed as to the 61st section. It is impossible to say that Morgan's treating was a corrupt practice: he was cold, and took a drink and gave it to his friends. If I held this to be a corrupt act, I would have to declare him incapable of holding office for 8 years. The words "illegal and prohibited acts" apply from the sections from 67 to 74, and to those only. But I do not wish to be misunderstood. If refreshments be given to influence voters, it would be bribery. It is of no consequence what shape the bribery takes. The election in that case would be void, not for a violation of the 61st section, but because it came within the range of sections 67 to 74. So as to the 66th section. If there was a distribution of a large quantity of liquor,—which is not suggested here,—the election might be declared void. I may mention that the Judges have considered this section, and they were unanimous that no violation of it would avoid the election. The majority of the rota judges was of the opinion, I believe, that no violation of sections 57 to 66 would void the election. There has been some division of opinion, I believe, as to the 61st section: none as to the 66th. If the candidate gave a drink out of a flask on election day it would not avoid the election. Private persons like Morgan and Willoughby

are entitled to my clear opinion that they have not been guilty of corrupt practices, according to the views I entertain of the statute. I cannot find Willoughby, Morgan, or Hogaboom to be agents of the respondent, as I would have to report if I reserved the case for the Queen's Bench. [The learned Judge then reviewed the evidence as to the agency of these parties.] On these and on public grounds also I think I ought not to reserve a case for the Queen's Bench.

After a short adjournment, counsel for the petitioners stated they would abandon the further prosecution of the petition.

GALT, J.—I think the proceeding a wise one, and the best for all parties. I therefore dismiss the petition; each party to pay his own costs.

(5 *Journal Legis. Assem.*, 1871-2, p. 7.)

EAST TORONTO.

BEFORE CHIEF JUSTICE RICHARDS.

TORONTO, 2nd to 6th September; 27th November, 1871.

NICHOLAS RENNICK, *Petitioner*, v. MATTHEW CROOKS
CAMERON, *Respondent*.

Agents—Accounts of Expenditure by—Excessive Expenditure—Personal Expenses of Candidate—Payment to Canvassers—Refreshments—Treating—Bribery—Evidence as to Offers to Bribe—Cumulative Evidence against an Agent—Costs.

A candidate in good faith intended that his election should be conducted in accordance both with the letter and the spirit of the law; and he subscribed and paid no money, except for printing. Money, however, was given by friends of the candidate to different persons for election purposes, who kept no accounts or vouchers of what they paid.

Held, that bribery would not be inferred as against the candidate, who neither knew nor desired such a state of things, from the omission of these subordinate agents to keep an account of their expenditure, especially as the law was new, and contained no provision similar to the Imperial statute, which requires a detailed statement of expenditure to be furnished to the returning officer. But it is always more satisfactory to have the expenditure shown by proper vouchers; and if money is paid to voters for distributing cards, or for teams, or for

refreshments, these will be open to attack, and judges will be less inclined, as the law becomes known, to take a favorable view of conduct that may bear two constructions, one favorable to the candidate and the other unfavorable.

The candidate is not restricted to his purely personal expenses, but may (if there is no intent thereby to influence voters, or to induce others to procure his return) hire rooms for committees and meetings, and employ men to act as canvassers, to distribute cards and placards, and to perform similar services in connection with the election.

The plain and reasonable meaning of the statute is, that when the prohibited things are done in order to induce another to procure, or to endeavor to procure, the return of any person to serve in Parliament, or the vote of any voter at any election, the person so doing is guilty of bribery.

The difference between the Imperial statute (17 and 18 Vic., c. 102, s. 2, subs. 3, proviso) and the Ontario statute (32 Vic., c. 21, s. 67, subs. 3, proviso), as to "legal expenses" in elections, pointed out.

The friends of the candidate formed themselves into committees, and some of them voluntarily distributed cards and canvassed different localities, with books containing lists of voters, noting certain particulars as to promises, etc. These canvassers often met voters in public houses, and while there, according to custom treated those whom they found there, and thus spent their money as well as their time. On this being represented to those who had charge of the money for election expenses, the latter, in several cases, reimbursed the canvassers.

Held, 1. That these general payments, if not exceeding what would be paid to a person for working the same time in other employments, would not be such evidence of bribery as to set aside an election.

2. That the furnishing of refreshment to voters by an agent of a candidate, without the knowledge or consent of the candidate and against his will, will not be sufficient ground to set aside an election, unless done corruptly or with intent to influence voters.

Where the object of an agent in treating is to gain popularity for himself, and not with any view of advancing the interest of his employers, such treating is not bribery.

The total expenditure proved was \$610, and the number of voters on the roll was 4,669.

Held, that the expenditure was not excessive.

Where the evidence as to bribery consists of offers or proposals to bribe, the evidence should be stronger than with respect to actual bribery.

Where three voters swore to three separate offers of bribery made to each of them separately by an agent of the respondent, which such agent swore were never made by him,

Held, that the evidence was not sufficient to justify the setting aside of the election.

The language of Martin, B., in the *Wigan case* (1 O'M. & H., 192), adopted as a general rule applicable to this case.

There being no grounds for charging the respondent personally with corrupt practices, and the scrutiny having been abandoned, the costs of those parts of the case were ordered to be paid by the petitioner. But with respect to the other costs, though the respondent was successful, the matters were proper to be inquired into in the public interest, and each party was left to pay his own costs.

The petition contained the usual charges of bribery, undue influence, intimidation, and other illegal and prohi-

bited acts and corrupt practices, and claimed that Francis H. Medcalf, the defeated candidate, had the highest number of legal votes, and should have been returned. The votes were: for the respondent, 1,232 votes; for F. H. Medcalf, 1,112; majority for respondent, 120.

Mr. Maclellan and Mr. Delamere appeared for petitioner.

The Respondent in person, and *Dr. McMichael*, for the respondent.

The petitioner abandoned the charge of personal complicity of respondent in any of the matters charged in the third and twelfth paragraphs of the petition, but not such acts by his agents as might affect his seat; and proposed to show a large number of votes bribed by Mr. Cameron's agents, and that undue influence was practised by said agents. The scrutiny was afterwards abandoned.

On the trial of this petition evidence was given to show the expenditure of various sums of money on behalf of the respondent by his friends. It was mentioned incidentally that Mr. McMichael, respondent's law partner, had paid some charges for printing, and this was the only sum that was expended by the respondent himself, and as to this, it was not suggested that there was anything illegal.

Any other moneys that were expended were raised by the friends of the respondent, and if any was improperly or illegally expended, it was without his knowledge and contrary to his express directions.

The chairman and secretary of St. James' Ward, the most populous in the division, were examined. They expressly denied the payment of any moneys for any illegal or improper purpose; and the secretary (*Mr. Scott*), through whom all the payments were made, said they were made on cheques, and proper receipts and vouchers were taken therefor, and the same could be produced if desired.

F. Warwick, the secretary of the committee of St. David's Ward, was twice examined. On his first examination he stated he had prepared books from the roll; the

books were supplied by the general committee. There were fifteen or sixteen of the committee, and they did the canvassing. He used no money; was not promised any. He saw some money paid for cards or bills by Mr. John Carruthers, chairman of the committee of that ward; saw money paid for posting bills; saw one Harrington paid by Carruthers; saw some other money paid by Carruthers for something connected with that work. Several persons were paid for carrying around cards; some fifteen or twenty dollars were thus paid. Parties were paid for going around to give notice of committee meetings and for carrying around cards; saw as much as \$2 given to a messenger, and as many as sixteen employed to carry around cards. Half of the number may have got nothing. Was not paid for his services. He knew very well Mr. Cameron had never been in the habit of paying for such services, and he had very little hope of ever receiving any for his; never received anything from any one for his services. Mr. Cameron visited the committee room and told him to be sure and have no money promised or paid for votes, and to be very careful and do nothing wrong. He gave up his school during the whole canvass, about fifteen days; no bargain about being paid; would not say he had no hope of being paid. He was subsequently recalled, and a paper shown him containing a list of names of about 47 persons under the heads "names," "services," \$, cts. Under the head of "services" opposite most of these 47 names were entered "scrutineer," "canvasser," "scrutineer," etc. Opposite a few, "meeting scrutineer," "meeting canvasser." The largest sum opposite "scrutineer and canvasser" was \$15 opposite the name of G. Morphy. Opposite the names of four persons \$10 was put, and the remainder, \$3, \$4, \$5, \$2, and as high as \$7, and half-a-dozen as low as \$2. One name in pencil, Mitchell, had \$20 opposite it. Joseph Duggan's name was put down, "use of room for committee 12 days, 2 meetings, etc., \$30." Fred. Warmoll "12 day's constant attendance at committee room from 9 to 7, making out canvass books, including

payment of two meals each day, \$30." There was a pencil memorandum at the bottom of the page, \$306. If that was intended to be the addition, some claims amounting to \$18 were added afterwards. The three last items in the statement would make the amount. In relation to the memorandum he stated it was in his own handwriting, that the men mentioned in the list claimed those amounts as what they ought to have. He gave it to Mr. Carruthers after the election was over, with all the other papers. When he made up the paper he told them he thought there was no chance of their getting anything. The parties named came to him to put their names down. They abused him about it; said he and Carruthers had got the money between them. When Mr. Carruthers employed men to distribute the tickets, he told them they should not get more than a common day's work, that they should do a little for the cause without pay, as others did. When he put down their names he told them they might as well put down three times as much as it was worth; they had been engaged with the knowledge that Mr. Cameron or Mr. Carruthers would not pay for these services. They had been so warned in his presence before they went to work. The parties named came to his house, he did not go to them. He might have seen them in the committee-room; they must have come to him. He never saw the paper since he gave it to Carruthers until then. He spoke to Carruthers about his own claim, and Carruthers said he had nothing to do with it.

A. De Grassi, the secretary of the central committee, said parties had applied to him for pay, but they were told there was no chance of their getting any.

Nineteen of the persons named on the list were called as witnesses. They almost all denied any knowledge of their names being on the list, or expecting any money, or having been promised any. Among the rest,

Thomas McDonald, whose name was on the list for \$5. He borrowed two sums of \$5 from Carruthers, who was his father-in-law, during the election. He said he received

nothing, nor gave anything to any one to vote for Mr. Cameron. Carruthers in his evidence said he paid McDonald two dollars for distributing cards, etc.

John Roddy, whose name was on the list for \$5, says he never made any claim to Warwick; but Warwick told him he had heard from Carruthers that those who acted as scrutineers were going to get something, and his name was down for \$5. He said he was never promised any money, and did not expect anything until Warwick mentioned it. He never went for any.

Joseph Duggan, whose name was on the list for \$30 for use of rooms, said Carruthers asked him what his charge was. He told him he made no claim, and he had not made any claim.

John Fitzgerald, whose name was down for \$10, said he got \$5 from Mr. Carruthers for distributing tickets—two dollars at one time and three dollars at another—and he was about nine days and nights canvassing and distributing. He asked Carruthers at one time if anything more was to be got? He said he did not know anything about it. He asked Mr. Warwick how he was getting along, and he said the election was protested. Carruthers paid him the money not for his interest but his labor. He did not promise him anything more.

Louis Walker, whose name was down for \$2, received \$2 from Carruthers. He and some other men undertook to canvass in a certain section, and in doing so spent money for refreshments. He told Carruthers he could not afford to lose his time and spend money in going about. Carruthers told him he had got money from Mr. Gooderham to pay for printing, but nothing to give away. He told him he would pay him for his time out of his own pocket, and to go on. He gave him \$2, and that was all he received.

The rest of those who were called whose names appeared on the list denied having authorized any claim or application being made on their behalf. They did not claim anything and did not expect anything.

William Gooderham, the younger, placed in Mr. Carruther's hands for the purposes of the election about \$150, and in the hands of Mr. William Hamilton, the younger, for a similar purpose, \$100. He states that when giving the money to Carruthers, it was mentioned the money was required for posting bills and other legitimate purposes of the election. He understood the payments were to be made for bill delivering, bill posting, and the proper expenses of the election. The money given to Mr. Hamilton was for St. Lawrence Ward, getting bills, tickets and cards printed, &c. He understood Mr. Carruthers was to do the necessary printing, the distributing tickets, and pay the other legitimate expenses. His impression was that some printing was done by the central and some by the ward committees. He supposed parties had to be paid for taking around tickets, and for rooms to hold meetings in, and other legitimate purposes. He told him to be careful and spend the money for legitimate purposes only.

Thomas C. Chisholm placed in the hands of Patrick Hynes about \$80, and of John Reid, \$80, and he spent about \$40 himself; making his expenditure about \$200. He gave the money to Messrs. Hynes and Reid to expend in printing and distributing cards, paying for committee rooms, &c. He told them he did not want Mr. Cameron defeated, and that they were not to expend the money for any purpose that was not legitimate. He believed it was so used. He thought it was to be used in the three wards. He gave it to them because he supposed they would use it to get canvassers and printing, and other legitimate purposes. Did not think the central committee printed all the cards; thinks there were other cards printed besides.

John Carruthers said there might be as high as \$5 a-piece paid for carrying around cards. He said he had paid all the expenses that had been paid in St. David's Ward, as far as he knew. Could not say how much he paid in these matters. It might or might not be \$100. It might or might not be \$50, for anything he knew. He did not get

the funds from any one for the purpose of paying the amounts in the statement. He did not know whose writing it was in; to the best of his knowledge he never saw it before. He gave money to McDonald—a dollar or two. He gave no man \$10; he did not spend \$200. Won't swear he did not spend \$100. He got money for election purposes from Mr. Gooderham. It was a small trifle to pay for posting up some bills. It was cash to pay some men they had going round posting bills. Mr. Gooderham said to him directly there was to be no money paid for votes. Thinks no one has asked him to pay for any services rendered during the election for Mr. Cameron. He might have given Louis Walker a dollar or so. He kept no accounts of the payments; had no reason for not doing so. If he paid Walker any money it was for delivering cards. No one received money for voting, nor did he ever give any one money to pay them for voting or for influencing their vote. He was strictly forbidden by Mr. Cameron to pay money. Heard him say, if one dollar would secure his election, he would not give it. Was never authorized by Mr. Cameron to pay for distributing cards or anything else. If he did so, it was on his own account entirely. He was sure that in any money paid for distributing cards he did not allow each one more than at the rate of a dollar a day for what he did. The canvassing and committee meetings, off and on, lasted about two weeks. No person he employed as a canvasser or scrutineer was ever paid by him, even at the rate of a dollar a day.

On his subsequent examination, he said people came themselves and volunteered to take a book and go and canvass for Mr. Cameron. There were arrangements as to certain parties taking certain districts. He would give each man a couple of streets, perhaps four or five; for two other streets, perhaps a dozen. Sometimes they would send men over the same ground. He thought some of the men made mistakes. Only paid parties for delivering cards. Might have had notices sent out for holding meet-

ings—that was most of it. The persons so employed were generally voters. He spent all the money he received for those purposes. The services they rendered were not as well paid for as if they had been laboring men employed by the day. Most of his own men got double pay for the same time as these men got who delivered these tickets. He denied that Warwick had ever handed him the list or any paper connected with the last election, except two or three scrutineers' books and some bills for printing. There might have been some small memorandum books. He had destroyed or lost all of them.

William Hamilton, Jun., chairman of the committee in St. Lawrence Ward, said he paid some money for distributing cards and posters, and some other legitimate expenses, and for no other legitimate expenses that he knew. There were fourteen or fifteen employed to distribute cards or posters: most of them strangers to him. He paid them \$5, \$6, or \$10 a-piece, according to the time they rendered. They did not render any account, and he got no receipts or vouchers. He could not recollect the names of any of them. Could not say if they were electors. At the ward meetings these persons came and rendered their accounts of the time they had been occupied in distributing the cards. In addition to these, there were two or three who canvassed. The persons to whom money was paid were those who went about posting bills and distributing cards. He employed fourteen or fifteen men. Thinks it would take four or five days to distribute the cards. They looked as if they were persons taking an interest in the election. He could not name any man he had paid money to. He spent from \$80 to \$100 in the election in this way. He kept an account of it. Got the money from Mr. Gooderham. He did not put down the names of persons to whom he paid money; knew Mr. Gooderham had confidence in him, and he would take his word for it. The money was paid for distributing cards. The bills were posted by the printers. It was given to fourteen or fifteen persons; thinks it was all done in a

week or ten days. He did not suppose it could be done for less; believes it was a reasonable sum to charge. He paid after the service was rendered. It was considered a fair sum, and he so believed it at the time, and it was not given for the purpose of inducing them to vote. He did not think any of them voted, because he did not know they voted. He did not bring any of them to vote, and did not see any of them vote. He was not aware of any one else paying any money in that ward.

Patrick Hynes said he received from \$75 to \$100 from Mr. Chisholm. It was given to men who were distributing cards. He gave it to them with a distinct understanding and belief that they were distributing cards. To some who said they were out three or four days he gave four or five dollars a-piece. Some might have worked in St. James' Ward. He understood they were generally working in St. David's Ward. Mr. Carruthers said he had got some money from Mr. Gooderham to pay for distributing cards—he mentioned \$50—that he had paid out all he had got, and people were finding fault with him that he had not paid them. He said he could not get enough to pay them all. He did not canvass any of the men; he understood they were warm friends of Mr. Cameron and were anxious for his success, but were not able to spend their time in doing this work without being paid. He thought it was legitimate work. He believed they had done the work. He did not know if they had spent all their time in canvassing; they appeared not to be doing anything else. He saw them both in the daytime and at night. He did not keep an account of those to whom he paid it. He of course treated parties; he did not consider it as done to induce them to vote. He thought it likely he spent from \$75 to \$100. He knew most of the men, but could not tell their names. If the parties came to him and said they had been out two or three days canvassing, he would pay them for it. They were laboring men, or a poor class of mechanics. He did not ask when he paid them if they had worked all the day, or how many hours

they had been out. He understood they had been employed, and paid them accordingly. Mr. Chisholm gave him the money for legitimate purposes. He understood that distributing tickets, posting bills, and work of that kind was considered legitimate, and that was the purpose for which it was expended. Never was expended, that he was aware of, for the purpose of bribing the electors, and none used for the purpose of treating at any meeting of electors. None given for the purpose of bribing himself. None were paid a sum, he thought, equal to fair wages for what they did, supposing them to have worked as they said they did and as he believed they did. He did not think any man got over \$5; some may have got more, others may have only got one or two dollars. He could not say if any of those mentioned in the list as entitled to money in St. David's Ward were paid by him. Could not recollect that they were.

John Reid said he received money from Mr. Chisholm. He did not know how much; did not count it. Was certain it was not \$100 or \$200. It was under \$100; he did not count it. It was over \$25. He could not come any nearer than that. The money was spent in distributing cards through the ward. He had no idea how many were distributed. They were given to the men to distribute, two or three together distributing them. Knows the names of a good many who were employed distributing. Thinks G. Morphy was so employed. Did not give him any money. Does not remember giving money to any of those mentioned in the list. Does not remember the name of any one he did pay; is not aware that he paid anybody; can't name a single person to whom he paid any of it. Is quite sure he has not the money still. He gave it to persons for distributing cards at promiscuous meetings. He did not remember to whom he paid it. Did not give any cards to those who would vote for Medcalf. Thinks he spent some of his own money in that way. Can't tell how much. Thinks he spent of his own money less than \$100 and over \$25. He spent all the money he got from

Mr. Chisholm. Did not think he had spent \$80 of his own money. Will not swear he did not. Did not know of any but himself spending money at that election. The money that he spent of his own and Mr. Chisholm's was spent entirely in the distribution of cards. He thought the parties were friendly to Mr. Cameron. His impression was that some were electors and some were not. To most of them he paid a couple of dollars; he gave each man what he thought he was worth. Did not know if they asked him for payment. They were men in middling circumstances. Very few of the laboring class had votes. They seemed very anxious for their man before they got the \$2. Thought there were about 1,000 voters in St. David's Ward. Did not know Mr. Hynes had any money to spend. Mr. Chisholm did not tell him so. Did not tell any of the committee he had funds for distributing cards. No particular arrangements were made by the committee for distributing cards, except that certain men had certain localities for distributing cards in. Some were paid and some not. He paid some not mentioned by the committee. He gave cards to men to distribute himself. The secretary of the committee in St. David's Ward generally distributed them. He was not aware that the committee knew he was distributing them promiscuously. He told the men, when he gave them the cards, the streets he wanted them distributed in. He could canvass about 300 in a day. Did not think that an unreasonable number; thought 500 not unreasonable. Some days he could not canvass over 20. Sometimes a man would require a longer time to persuade. He said three or four hundred would be a great many to canvass in a day—to go from house to house. If it were only necessary to throw the card into the house, three or five hundred cards could be distributed in a day. Did not think he spent \$75 in distributing tickets. Mr. Chisholm did not pay anything to him for the purpose of influencing him: all he was worth would not influence him. He supported Mr. Cameron before Mr. Cameron gave him the money. The money was not given for the purpose of in-

fluencing other voters, or bribing them. He did not use the money for the purpose of influencing the voters, or corrupting or bribing them ; he used no money for corrupt purposes. He was well aware Mr. Cameron was opposed to spending money for the purpose of the election.

The case was then argued by Counsel, and the Court adjourned until the 27th September, when the following judgment was delivered :

RICHARDS, C. J.—It was conceded, and the evidence seems to establish beyond all doubt, that the respondent, in good faith, intended that the election should be conducted, not only according to the letter of the law, but according to its very spirit and intent. He subscribed no money, and paid none, except for some printing, the amount of which was not mentioned, and which there is no doubt it was proper for him to pay ; and it did not appear that he even knew that any considerable amount of money was being expended.

When a man so situated is to be held liable for the acts of his agents, the observations of Martin, B., in the *Westminster case* (1 O'M. & H., 95), seem to me to enunciate opinions that will meet with general approbation : “ The law is a stringent law, a harsh law, a hard law ; it makes a man responsible who has directly forbidden a thing to be done, when that thing has been done by a subordinate agent. It is in point of fact making the relation between a candidate and his agent the relation of master and servant, and not the relation of principal and agent. But I think I am justified, when I am about to apply such a law, in requiring to be satisfied, beyond all reasonable doubt, that the act of bribery was done ; and unless the proof is strong and cogent—I should say very strong and very cogent—it ought not to affect the seat of an honest and well-intentioned man by the act of a third person.”

It was urged on behalf of the petitioner, that large sums of money were expended to aid in the election of respondent, and the responsibility was cast on him to show that it was spent in a legitimate manner.

In the *Bradford case* (1 O'M. & H., 30), the respondent opened an unlimited credit at his banker's in favor of his agent, who availed himself of it to the extent of upwards of £7,200; and the agent sent the returning officer a mere abstract of the totals of outlay, unaccompanied by vouchers; and this was knowingly done, contrary to the statute 26 & 27 Vic., cap. 29, sec. 4. It was shown that large numbers of electors were influenced by corrupt practices committed by the agents of respondent. Martin, B., said as to this (p. 33 of the case), that his impression was, if petitioner's counsel had put in the account, and proved that no bills or vouchers had been delivered to the returning officer, he would have called on the respondent to prove the legality of every payment contained in the account from the beginning to the end of it. His impression was that that alone would have made a *prima facie* case against any person, especially when he called attention to the amounts contained in that paper.

The Imperial statute referred to required that no election expenses should be paid except through an agent, whose name should be given to the returning officer, and it was to be published. The bills were to be sent in to the agent within a month. A detailed statement of expenditure, with vouchers, was to be furnished by the agent to the returning officer within two months after the election.

We have no such provision in our statutes, (a) and we are now for the first time called upon to carry out the provisions of the law, which has been characterized by Baron Martin as a harsh law, and apply its principles to the conduct and actions of men, some of whom have never been accustomed to keep accounts of any kind, and certainly not accounts and vouchers relative to election expenses. I do not think I can be called upon, as against a person who neither knew nor desired this state of things, to infer bribery from the omission of these subordinate agents to keep an account of their expenditure, or to

(a) See now R. S. O., c. 10, ss. 183-187.

recollect the persons to whom the money by them expended was paid, as I would do if administering the law according to the enactments which prevail in England on the subject.

Here the money was not furnished by the candidate, nor does it clearly appear that he was aware that any had been subscribed or was being expended for the purposes of the election; but it is probable he may have thought that was the case, and it appears he impressed upon his friends the absolute necessity of obeying the law. If he had been aware that a lavish expenditure was going on, or if it was manifest that money was being recklessly used, he ought to have checked and prevented it; and although if I were satisfied the money had been used for corrupt purposes I would be compelled to avoid the election, yet I do not feel called upon to infer that it was so used from the mere absence of a satisfactory account of its expenditure, verified by vouchers.

There has been no evidence given to show that the expenditure, on the whole, was excessive, if the kind of expenditure referred to is allowable at all.

Mr. Scott expended say about \$300 in St. James' Ward—no objection is offered to the expenditure or its details; Mr. Gooderham gave Carruthers say \$150; Mr. Chisholm gave Hynes \$80, and Reid for all the wards, \$80; say, if all expended in St. David's Ward, \$210; Mr. Gooderham gave Hamilton, for St. Lawrence Ward, say \$100; making in all \$610.

The number of voters on the roll, in St. James' Ward, were 1,856; St. David's, 1,827; St. Lawrence, 986.

If the expenditure in St. James be considered a fair one at \$300, the others do not seem unreasonable, though the St. James' committee may have paid for more of the printing than was paid for in the other wards.

From the manner in which they gave their evidence, I was under the impression that Hamilton and Hynes had spent all the money placed in their hands for the purposes they mention—for the *bonâ fide* object of paying

for services rendered, and not with a view of corrupting or unduly influencing votes.

As to Carruthers, I am by no means satisfied that he paid out all the money he received. The list, which the petitioner's counsel in some mysterious way obtained possession of, showed the names of persons who had been employed in taking around tickets, some five of whom had received small sums, and the larger portion had not received anything, and never asked or expected anything. Some of them, when applying to Carruthers, were told he had no money to expend for these purposes, but only for printing; yet he paid some small sums, as he said, out of his own pocket. If he was unwilling to pay these men for the services so rendered, and who were all friends of Mr. Cameron, out of the money he received, I do not think it likely he would pay over the money to induce others to vote for Mr. Cameron. Warwick, in his evidence, said that many of the parties who applied to him for their pay stated that Carruthers and he had received money to pay these expenses, but had kept it themselves. Hynes said that Carruthers told him he had received some money from Mr. Gooderham to pay for printing, etc., but he understood it was only \$50. It may have been he had only received \$50 then, as Mr. Gooderham said he paid the money to him at different times.

The evidence of Reid was equally unsatisfactory, and did not impress me with the conviction that he had spent all the money he received in paying expenses connected with the election, whether legitimate or otherwise.

It is contended that the decisions under the English statute are not applicable to the state of the law existing here.

Reference is made to the three clauses of the second section of the Imperial statute, 17 & 18 Vic., cap. 102, which enacts "That every person who shall directly or indirectly, by himself or any other person on his behalf, make any gift, loan, offer, promise, procurement or agreement as aforesaid, to or for any person, in order to induce such

person to procure, or endeavor to procure, the return of any person to serve in Parliament, or the vote of any voter at any election," shall be guilty of bribery.

In the *Coventry case* (1 O'M & H., 106), Mr. Justice Willes, in referring to this section, says: "Therefore anything, great or small, which is given to procure a vote would be a bribe; and if given to another to purchase his influence at the election, it unquestionably would be a bribe, and would avoid the election. Our own statute, 32 Vic., cap. 21, sec. 67, 3rd paragraph, is in the same words.

At the conclusion of the second section of the Imperial statute are the words, "Provided always that the aforesaid enactment shall not extend, or be construed to extend, to any money paid or agreed to be paid for or on account of any legal expenses *bonâ fide* incurred at or concerning any election." The proviso at the end of the section in our statute is, "Provided always that the *actual personal expenses of any candidate, his expenses for actual professional services performed, and bonâ fide payments for the fair cost of printing and advertising*, shall be held to be expenses lawfully incurred, and the payment thereof shall not be a contravention of this Act."

It is argued that the effect of our statute is to restrict the candidate to the payment of his personal expenses—that is, for his own board, lodging, horse hire, travelling expenses, I suppose, and his expenses for actual professional services performed,—meaning fees paid to lawyers for their services as such.

In this view, he could not hire a room to meet the electors in, or for his committee to meet in, unless he were then personally present; and none of his committee could hire a room for that purpose (for that would not be for professional services), if such room belonged to a voter, and none other could be conveniently obtained. I am not inclined to put this narrow construction on a statute so highly penal as this is. The plain and reasonable meaning of the statute seems to me to be what its words indicate, that when the prohibited things are done "in order

to induce such person to procure or endeavor to procure the return of any person to serve in parliament, or the vote of any voter at any election,"—the person so doing shall be guilty of bribery.

In the *Coventry case*, the point was whether one candidate offering to pay the expenses of a co-candidate was guilty of bribery, and reference being made to the proviso in the section of the English Act, the learned Judge (Willes) said, "It does not relate to the expenses of voters. To pay the expenses of voters on condition of their voting or abstaining from voting, is unquestionably bribery." He then proceeds, "But the candidate may pay his own expenses, and employ voters in a variety of ways; for instance, he may employ voters to take around advertising boards, to act as messengers as to the state of the poll, or to keep the polling booths clear. He may also adopt the course which appears to have been adopted in this city, that is to say, the city or borough is divided into districts, and committees are formed amongst the voters themselves, of selected persons, who go about and canvass certain portions of the district, and for their services these persons are sometimes paid and sometimes not paid. Now, unquestionably if the third clause of the second section was to be taken in its literal terms, the payment to canvassers under such circumstances, being, as it is, a payment to induce them to procure votes by means of their canvass, would come within the terms of this clause, and would avoid the election. We have, therefore, a test supplied of the meaning of the third clause of the second section, by means of which we see that it was not intended by this section to do away with every payment made by the candidate in the course of the election." After referring to the *Tamworth case*, where reference is made to the cases deciding that employing voters and paying them as canvassers was not colorable, he then refers to the *Lambeth case*, in which voters employed as canvassers were paid, and it was not considered illegal. He adds: "It is hardly necessary to point out how exceedingly dangerous the

adoption of that system is, both in respect to the payment of canvassers, and also in respect of that which has been held lawful, viz. : the supply of fair refreshments to unpaid canvassers, whilst engaged actually and not colorably upon this work ; and in like manner, of refreshments to committee-men. It is proper, when this system is referred to as not being unlawful in itself, to say that it exposes members to very great danger, and when it is merely colorable it would avoid the election." He comes to the conclusion that paying the expenses of a co-candidate is not bribery, and is not prohibited by the statute. He further adds : " You must show an intention to do that which is against the law, before you bring the case within the highly penal clauses of the statute."

From the evidence given, and the surrounding circumstances, I do not feel warranted in inferring that the sums really paid to electors for putting up placards, distributing cards, and similar services, were paid colorably and to influence votes.

The course pursued, as I understand, was that Mr. Cameron's friends formed themselves into committees in the several wards, and persons came forward and volunteered to distribute cards in the several localities. They were furnished with books showing the names and residences of the parties they were to call on, and they returned these names and the answers they gave as to whom they would vote for, to the secretary of the committee ; and in that way the information was conveyed to the scrutineers as to the parties who were on the list, whether they were in the city, whether they were dead, and for whom they were expected to vote. The parties entrusted with these books and tickets were, it may be presumed, those in whom the friends of Mr. Cameron had confidence, or they would not have had that position. When the parties commenced to distribute cards, &c., they often found the parties on whom they were to call at public houses, and when there, and speaking on the subject of the election, they, as seems to be the almost universal custom

with the class of men whom they meet, asked them to drink, and if others were present they were also asked. The consequence was, the parties distributing tickets frequently spent their money, lost their time, and got no pay. When this was represented to the parties having funds to expend they considered it a legitimate purpose to pay these parties for their services a reasonable sum, not at any time exceeding what would be paid to a person for working the same length of time in other employments. I cannot say that the evidence of these general payments shows any such bribery as would justify me in setting aside the election.

On this particular feature of the case, I may as well remark that when a candidate or his friends expended large sums of money during an election, it is always more satisfactory to have such expenditure shown by correct and proper vouchers; and if any money be paid to voters, or large sums paid out for refreshments, or teams used in any way, this will be open to attack and observation, and judges will be less inclined, as the law becomes known and its provisions pointed out, to take a favorable view of acts and conduct that may bear two constructions, one favorable to the party elected, and the other against him.

As to \$10 paid to Mr. McDonald, the son-in-law of Carruthers, Carruthers himself says he gave him a dollar or two. McDonald says he borrowed from him during this election, \$5 at one time and \$5 at another, and this had nothing to do with the election. He seemed to be a warm supporter of Mr. Cameron, and I am not inclined to think Carruthers gave him the \$10 on account of his services during the election, or to bribe him.

The next point is that, with intent of promoting Mr. Cameron's election, Mr. Chisholm spent money for supplying drink to a meeting of electors, assembled for the purpose of promoting such election.

Mr. Chisholm gives evidence on that point, and it is the only evidence given on the subject. He says his own expenses were, on the whole, for cab hire and money paid

at ward meetings, about \$40. He was ill before the election, and hired cabs to take him from one place to another. After the meetings were over he asked those present to drink, and all present drank. He said his object was to be friendly with them, and if, after that, they were friendly to his candidate, he was glad of it. His largest expenditure in an evening was six or seven dollars, including cab hire. When he asked the people to drink the question of voting was never mentioned. He did it on his own account. In doing so he had no desire to influence the people's votes. "The object I had in view was this: when men take an interest in these matters, as I did, and exert themselves, if they don't treat people, they think they are mean, and I do not wish to be considered mean." Without deciding that furnishing refreshment by an agent of a candidate, without his knowledge or consent, and against his will, will set aside the election, I think I may dispose of this point in the case, in deciding whether what was done was done corruptly, to influence votes. The lengthened exposition of the cases, as to furnishing refreshments, in the judgment of Chief Justice Hagarty, in the *Glengarry case*, (a) makes it unnecessary for me to refer to them at length.

In the *Tamworth case*, where men were employed to keep the peace on the polling day by an agent of one of the respondents, amongst whom were some 29 voters, at 10s. a-head, Mr. Justice Willes had to consider why the agent employed those men, and he said: "I believe he employed them because he desired to gain popularity for himself, and because he desired to make a handle of their employment to gain favor for himself amongst the class to which the men belonged. . . . Upon the whole, however, I come to the conclusion, that it was an unauthorized act, done by Baraclough for the purpose of obtaining popularity for himself, and that it was not, either in respect of the question of law, or upon the established facts, an act which I can designate as having

(a) Page 15, *ante*.

been bribery. It is an act which, so far as I judicially can, I reprehend and condemn; and if I thought it had been done by him with any view of advancing the interests of his employers, so that I had to impute the intention to do that which was the natural consequence of the act, I must have held the election to be void."

Looking then at this as an unauthorized act against the wishes of the candidate, I think the fairest and most reasonable conclusion to arrive at is what Mr. Chisholm himself says, viz.: that he treated because people would have thought him mean if he did not, and without any corrupt intent.

The next class of cases to which my attention was directed was that of those to whom offers of bribes were made to induce them to vote for respondent.

The first is John Fulton. He stated that Leonard Hewit asked him to vote for Mr. Cameron. He said he could not. Hewit asked if he was not going to build a house; he said he was. Hewit said he would give him two thousand feet of lumber if he would vote for Cameron. He said he could not do it. Hewit said he would send him some more if that was not enough. He said he voted for Medcalf. Mr. Cameron's scrutineer swore him, and that was the way his name came here. On another occasion, just to try him, he asked Hewit what he would give him to vote for Cameron. Hewit said \$20, just to try him; he said he wanted more. Hewit finally decided to give him \$25, and gave his word of honor he would make it all right. Hewit asked, would he not take his word and honor until after the election. He said he supposed he must, and he was to vote for Mr. Cameron.

On cross-examination he said he did not promise to vote for Mr. Cameron. He said he wanted to get a hold on Hewit; he thought he was too officious, and he wanted to get hold of him. He said he never promised to vote for Mr. Cameron. He would travel from here to Cooksville on his bare feet to vote for Medcalf rather than for Cameron. He said there were plenty of men present when the

conversation about the lumber took place, but he could not name any of them. The first time he thought Hewit was in earnest, and he was so himself when he refused him. The men could not hear them. He could not tell a single man present when Hewit made the offer.

Hewit was called and denied ever offering him any lumber to vote for Mr. Cameron. He said in conversation (they worked in the same shop with other men) about the candidates, that Fulton said when he last voted he got lumber enough to build a house, and he would not vote for either of the candidates unless they came down. He asked him if he thought Medcalf would come down. Fulton said he did not think he would. He (Hewit) said if that was the matter he was foolish for voting for him; that the Government had plenty of money and lumber too; that was about the substance of his conversation. He did not offer to send up 2,000 feet, or any lumber. He did not offer him \$25 to vote for Cameron. He must be laboring under a mistake; he never offered him a copper. Hewit contradicts Fulton's statements as to offering to give \$20 or anything. He never understood from beginning to end he was to vote for Cameron; always understood he was to vote for Medcalf. He canvassed for him. He did not know Fulton had a vacant lot. He said that what he did say to Fulton was in the way of chaffing, and as a joke. He said he was foolish for voting for Medcalf; that the Government had plenty of money and lumber too. Nothing was said from which any person could seriously infer that he intended to offer Fulton anything to vote for Mr. Cameron. He did not think 2,000 feet of lumber or \$25 in cash would have induced him to vote against Medcalf. From the manner in which these men gave their evidence, I was not satisfied that any serious offer to bribe Fulton had been made by Hewit.

The other persons to whom offers were made were George Smith, James Agnew, and Samuel Nisbet.

George Smith said that one of the Gooderhams, he did not know which, said if he would vote for Mr. Cameron

if we all supported him down there, they would give the right to have South Park Street through. He believed they surveyed it out the day before the election. He believed Gooderham owned a small lawn.

I understand by this that Mr. Gooderham would consent to a street being continued through the lawn. Whether this gentleman was an agent of Mr. Cameron's or not does not appear. I think we cannot on this vague kind of statement unseat the sitting member.

George Smith also stated that Carruthers told him he had bets on the election, and he could make more bets if he (Smith) would vote for Mr. Cameron. He said he would give him \$20 if he would vote for Mr. Cameron against the old man (meaning Mr. Medcalf). Smith said he would not take \$100 and vote against him. He said he could make up bets; he had one made with Victor Thomas at the same time. Carruthers said he would win the bet if he voted against the old man. This was on the nomination day the speaking was going on; it was a little damp, and he wanted to get away.

John Agnew said that on the night of the meeting at the Dutch Farm, Carruthers said to him, "You always did go for me." He replied, "But I can't now." He would do all he could for Mr. Cameron only for Mr. Medcalf. Carruthers said, "You had better have a couple of dollars. You will have your mind made up before the election comes on." He said he had his mind already made up.

Samuel Nisbet was a scrutineer for Medcalf. He said he met Carruthers at Duggan's tavern; McDermott and McDonald were there. Carruthers said if he would go with them, he had a nice inside job for him to-morrow. Nisbet said he could not promise. Carruthers said if he went with him he would not rue it; that there was lots of money going. He (Carruthers) said before Wednesday or Thursday night at the outside, he should be recompensed. McDermott and McDonald pressed him to go with them—said there was lots of money. He asked how money could be used. They said they would make that all right,

saying, before Wednesday or Thursday night he would find out. On the day of the polling McDermott and McDonald came in; they were surprised to see him there acting as scrutineer for Medcalf; they began to abuse him and call him names. He threatened them if they did not keep quiet at the polling booth, he would use their own words against them. They told him if he had got the two dollars the night before, he would have been for Cameron.

On cross-examination, he said he told McDonald on the day of election he would use the words against him. He first told it to the petitioner's solicitor that day. It was not known, before the conversation at Duggan's, that he was going to support Medcalf. He did say something to Mr. Cameron at Lynch's; found fault with him, and showed a preference for Medcalf; and that was before the conversation at Duggan's. He fell in at the end of a meeting in favor of Medcalf at Duggan's; was also at a meeting at Hamilton's, and said something to two of Cameron's supporters there.

Mr. Carruthers was called, and said he never offered Smith a cent to vote for Mr. Cameron. Smith said no money would induce him to vote against Medcalf. He never gave or offered Agnew two dollars to vote, or make up his mind about voting. He knew very well he would vote for Medcalf, whatever might have been given to him. He denied speaking to Nesbit at Duggan's; he had observed him at Foley's tavern before that, and he would not speak to him, and did not all that night. He never hinted to him that the Government had plenty of money, and could pay election bills. Nesbit was trying to prevent Mr. Cameron from speaking at Lynch's, by making a noise and shouting, before seeing him at Duggan's. He saw Agnew at the lager beer saloon, and he was drunk.

McDermott said he saw Nesbit at Duggan's, and asked him who he was going for. He said he did not know. He offered him nothing to vote for anybody, nor did McDonald. He and McDonald did not take Nesbit aside

to speak about the election, nor offer him anything to vote. He denied having the conversation with Nesbit which Nesbit said he had had with him. The quarrel at the poll began from Nesbit swearing McDermott as to his vote ; and the latter then said if he had got two dollars the night before, he would have been for Cameron. He said he thought he wanted to be bought, coming round a committee room the night before the election, not knowing who he was going to vote for.

In the *Cheltenham case* (1 O'M. & H., 64-65), when the question came up as to evidence in the case of an offer to bribe, Baron Martin said : " Where the evidence as to bribery consists merely of offers or proposals to bribe, the evidence required should be stronger than that with respect to bribery itself, . . . it ought to be made out beyond all doubt, because when two people are talking of a thing which is not carried out, it may be that they honestly give their evidence ; but one person understands what is said by another differently from what he intends it."

Looking at the whole evidence as applicable to the offer to bribe said to have been made by Carruthers to Smith, Agnew and Nesbit, I do not think such a clear case is made out as would justify me in setting aside this election on the ground of an offer to bribe these three persons. They received nothing, they did not alter their votes, and I fail to see clear and distinct offers to bribe, which I think the rules laid down in these cases require to justify me in finding that they were made as alleged.

During the proceedings there were some other cases referred to, which at some stage of the proceedings seemed to require further explanation, but the further progress of the inquiry served to afford a satisfactory answer, and I have only referred to those cases which were specially adverted to by the petitioner's counsel, at the summing up at the close of the case.

I do not think I can better express many of the views that I entertain in relation to this case than by quoting

the language of Baron Martin, in the *Wigan case* (1 O'M. & H., 192), as to the principle on which a judge should act in trying a petition alleging corrupt practices. He says : "If I am satisfied that the candidates honestly intended to comply with the law and meant to obey it, and that they themselves did no act contrary to the law, and *bonâ fide* intended that no person employed in the election should do any act contrary to the law, I will not unseat such a person upon the supposed act of an agent, unless the act is established to my entire satisfaction. Things may have been done at an election of which I do not approve—for instance, having committees at public houses, hiring a number of carriages (which now in borough elections is prohibited), or hiring "roughs"—but which do not of themselves avoid an election. They are ingredients which may be taken into consideration, and they may tend to show what was the real quality and meaning of an ambiguous act, which may have one effect or another, according as the judge's mind is satisfied that it was honestly or dishonestly done. It may be that in an election, certain acts have taken place which the judge disapproves of, but which do not satisfy him that another act, on which the validity of the election depends, was corruptly done. But if, upon a future petition ensuing upon another election in the same place, acts similar to those of which the judge had expressed his disapproval were proved to have been repeated, the judge who tried the second petition might well take them into consideration to aid his conclusion, that the act upon which the validity of the election depended was a corrupt and dishonest act."

I am satisfied that the respondent honestly intended to comply with the law, and meant to obey it, and has done no act contrary to the law, and *bonâ fide* intended that no person employed in the election should do any act contrary to the law. I have not that clear and satisfactory evidence of acts contrary to law, done by his agents, which will, in my opinion, justify me in declaring the

election of the respondent void, and it therefore becomes my duty to declare that the respondent was duly elected.

As to costs, there were no grounds whatever for charging the respondent personally with acts of bribery or other corrupt practices, and the scrutiny was abandoned after some attempts were made to go on with it. The costs as to these parts of the case I direct shall be paid by the petitioner to the respondent.

As to the other parts of the case, though the respondent is successful, I think the matters were proper to be inquired into in the interest of the public; and as to them, I give costs to neither party.

(5 *Journal Legis. Assem.*, 1871-2, p. 10).

WEST TORONTO.

BEFORE CHIEF JUSTICE RICHARDS.

TORONTO, 7th to 9th September; 27th November, 1871.

ROBERT ARMSTRONG, *Petitioner*, v. ADAM CROOKS,
Respondent.

Bonâ fides of Candidate—*Election Committee Decisions*, 34 Vic., c. 3, s. 30
—*Judge acting as Juror*—*Canvassers for Special Classes of Voters*
—*Money paid to Voters not rendering Services*—*Agency and Sub-Agency*—*Ratification of Illegal Payments*—*Hiring of Teams*, 32 Vic., c. 21, s. 71—*Costs*.

Where a candidate in good faith intended that his election should be conducted legally, and printed a synopsis of the new law as to corrupt practices, and circulated the same throughout the constituency, and caused it to be published in a newspaper with an editorial article on it, and an abbreviated form of the synopsis to be posted in each committee room, and informed his central election committee of its provisions; and the Judge found that he had taken a good deal of trouble to have the law explained and circulated amongst the electors, and desired to obey it:

Held,—That although many of the acts done during the election created a good deal of doubt and hesitation in the mind of the Judge, yet, as the return of a member is a serious matter, and ought not to be lightly set aside, the Judge ought to be satisfied beyond all reasonable doubt that the acts so done were done with the intention of influencing voters, and so done corruptly; and this election was upheld.

The effect of s. 30 of 34 Vic., c. 3, requiring the Judge to be guided by "the principles, practice and rules on which election petitions touching the election of members to the House of Commons in England are dealt with," is, that the Judge is to act on the principles upon which Election Committees have acted, where he has no light from the rules

which his own professional experience supplies him with. And he is in addition to be bound by the decisions of the Rota Judges in England trying elections under acts similar to our own, in the same way as the Courts feel bound by their judicial decisions in other legal matters.

Where in ordinary cases there is evidence to go to a jury, but on which the Judge, if sitting as a juror, would find for the defendant; in similar cases in election trials he ought to find against the charge of bribery.

The *bonâ fide* employment and payment of a voter to canvass voters belonging to a particular religious denomination, or to the same trade or business, or to the same rank in life, or to canvass voters who only understand the French or Celtic languages, is not illegal.

The fact that such a voter has skill or knowledge and capacity to canvass would not make his employment illegal.

Money was paid by an agent of the respondent (\$7 each) to certain voters for canvassing, they observing that "a little money in election time was allowed for knocking around," which observation the agent considered "going about to solicit votes." The agent denied it was paid with any corrupt intent, although his evidence was not satisfactory. The voters swore the money was paid to their wives, and the agent was not recalled to explain it.

Held.—That although such payment might be open to an unfavorable interpretation, it was not, according to the evidence, inconsistent with being made without any improper motive.

Where money was paid to voters for services agreed to be rendered, but such services were not rendered owing to the misconduct of the voters, such payment was not bribery.

A voter who had a claim of \$3 from a former election of respondent, when canvassed to vote said he did not think he should vote, evidently putting forth the \$3 that was due to him as a grievance. The clerk of an agent of the respondent promised to pay it to him, and he voted, and the money was paid after the election, and charged by the clerk in the agent's accounts as "paid J. Landy \$3," but without the knowledge of such agent. Another agent of the respondent (McD.), who was treasurer of the ward, and was aware of the claim, and had told the voter it would be made right, paid the first agent's account, but did not then take particular notice of the payment, and it was not explained to him. The clerk had been requested by his employer (the agent first mentioned) to canvass a particular voter, but was not employed as a canvasser generally by any one.

Held. 1.—That such clerk was not an agent or sub-agent of the respondent.

2.—That the payment of the account by the agent (McD.) was not under the circumstances a ratification by him after the act, so as to affect the election.

Cabs and carriages were hired for the use of committee-men and canvassers during the election and on the day of polling, with instructions to the drivers that they were not to convey voters to and from the poll. One cab was however used for that purpose for the greater part of the day, but without the assent of the agent of the respondent, who had charge of the cab.

Held.—That as the evidence did not show that the cabs and carriages were colorably hired for the purpose of bribery or conveying voters to the poll, or that the one cab was so used with the assent of the agent of respondent, the hiring was not an illegal act within s. 71 of 32 Vic., c. 21.

Observations on the reasons why candidates should be held liable for acts done by their agents. The *Taunton case* (1 O'M. & H., 184) approved.

The election was sustained, but it being in the public interest that the matters brought forward should have been inquired into, and as the respondent had not exercised supervision over the expenditures in connection with the election, the petition was dismissed without costs.

The petition contained the usual charges of corrupt practices against the respondent and his agents, and claimed the seat for the defeated candidate, John Wallis. The votes at the election were: For respondent, 1,487; for John Wallis, 1,316; majority for respondent, 171.

Mr. Harrison, Q.C., for petitioner.

Mr. Bethune, for respondent.

The evidence affecting the acts of the respondent and his agents at the election is fully set out in the judgment.

RICHARDS, C. J.—The petitioner, Robert Armstrong, in the third paragraph of his petition, represents that Adam Crooks, who was returned duly elected to represent the said division in the Parliament of the Province of Ontario, at the general election held on the 21st March last, by himself and other persons on his behalf, was guilty of bribery, treating and undue influence, before, during and after the said election; whereby he was and is incapacitated from serving in the Parliament of Ontario for the West Riding of the City of Toronto; praying that the return of the said Adam Crooks should be declared void, and that John Wallis was duly elected and ought to have been returned.

The evidence shows that a fund was raised by subscription by respondent's friends, amounting to about \$450, for the purpose of defraying the expenses of the election, to which the respondent contributed in the first instance \$500. It was thought that the contribution of \$500 by respondent, and what would be contributed by others, would pay all the expenses of the election; but if not, Mr. Cattanach (a member of the law firm of Crooks, Kingsmill, and Cattanach, of which firm respondent was a member), was authorized to apply any funds to the credit of respondent in the partnership to pay any legitimate charges, and charge it to his account in the part-

nership. Mr. Cattanach, though not at first appointed treasurer of the fund, eventually acted as such, and was at liberty to exercise his own discretion in paying the legitimate charges without applying to respondent as to each payment so to be made. A central committee was formed, and committees in each of the four wards composing the Western Division. Efforts were made to get vacant houses to use as committee rooms in all the wards, and when these could be obtained they were hired for that purpose. When the vacant houses could not be obtained, rooms for the committees were engaged at public houses.

The respondent informed the central committee of the provisions of the new law; made a synopsis of it, got it printed and inserted in the *Globe*, with an editorial on it; he had a large number of copies of the synopsis printed and circulated, and called attention to it, with instructions to have it pasted in each canvasser's book; a more abbreviated form was stuck up in the committee rooms. The respondent said he was convinced that by a strict observance of the law they could carry the election. He did not know of any violation of the election law on his own part, or by any one on his behalf.

The chairmen of the ward committees were furnished with money to pay expenses. Mr. Hime, the chairman of St. Patrick's Ward, stated that when he gave the money to the parties he told them none of it was to be expended in treating or in influencing voters; it was to pay their own personal expenses. He also gave written instructions that any one who received pay for his services must not vote. Those parties who did spend the money for expenses said they did so in getting refreshments for themselves when canvassing, and if any friends were present they would ask them to partake, but that that was not done with the intention of influencing their votes. In St. George's Ward the money was disbursed by Mr. Kingsmill, another partner of the respondent; about \$30 were paid for cab and

carriage hire, of which \$18 (this is in addition to those spoken of by Mr. Cattnach, and others, which have not been paid for) were for carriages referred to hereafter, messengers, use of committee room, and for distributing notices and getting up the state of the polls, and employment of persons to inquire about voters whose names were on the list, and who were not known to any of the committee. There was an item of personal expenses during the canvass of \$19, being about three weeks, for refreshments, cab hire, and such like charges. Mr. Kingsmill stated that he hired two carriages for the day of election from Mr. Bond, one to be at the disposal of Mr. Jaffray, the chairman of St. John's Ward, and Mr. Millichamp, who was looking after some of the committees; there was another carriage and driver, and the charge was \$18 for all; directions were given to Bond, from whom they were hired, not to carry voters in those carriages. They were to use the carriages to send them to what polling places they chose to carry agents, committee-men, &c.

Mr. Kingsmill said in his evidence they were discussing in St. George's Ward committee about getting voters up, and they came to the conclusion that it would be legal for Mr. Crooks' friends to bring up electors in their own vehicles. Several persons and cabmen volunteered. He told the cabmen when they volunteered the use of their cabs it must be *bonâ fide*; that if they claimed payment for the cab after that, they would not get it. The evidence shows that several others besides cabmen volunteered their conveyances also. Mr. Kingsmill stated that there were about 32 polling places in the division; it was very difficult to collect the state of the poll, from time to time, in each polling division. They despatched carriages from time to time. It was not done as effectually as he wished, as it required a good number of cabs. It was necessary to keep up connections with the different scrutineers, to inform them when a man voted in one subdivision who had a vote in another, so as to prevent him voting more than once, and they had occasion

to send messengers from the central committee to see that the other committees and scrutineers did their duty. They, in that way, required the services of a good many persons. The expenditure in St. George's Ward amounted to about \$100.

The remaining ward is St. Andrew's, the chairman of which was Dr. Howson, who was also secretary and treasurer of the central committee. The expenditure there has amounted to about \$360.

Dr. Howson stated that, in any bargain made with any of the parties who were voters, it was not once stated to any of them how they were to vote. There was no understanding how they were to vote. He had no intention of influencing any of those who were voters by any purchases made, or by the employment of those who were employed, or of any of them. He did not in any case pay what he considered an exorbitant price for anything done or furnished at his request during or just before the election. He did not expend any part of the money received from Mr. Cattnach, or of his own money, directly or indirectly, in bribing or to influence electors. He was anxious to carry out the instructions to the committees in good faith. In addition to the printed instructions, he verbally cautioned members against using any means that might be construed into bribing electors or treating. With regard to refreshments furnished to committees, the respondent said himself that, when it was stated on the day of election that the committee in St. John's Ward were unwilling to get refreshments for those who were employed as committee-men and scrutineers, he directed that it should be procured; he seems to have ordered a carriage for himself on the day of election, and two others for the use of the central committee.

These carriages were ordered at Bond's. One of the Bonds, the father, was a voter.

The respondent himself, when canvassing, stopped at some of the public houses and took some refreshments,

which were paid for either by himself or some other person who was with him.

Most if not all of the parties that were owners of cabs, who had volunteered the use of their cabs on the day of the election, after the election was over sent in their bills to the central committee or to Mr. Cattanaach, but payment for the cab hire was invariably refused. Mr. Cattanaach, at the conclusion of his evidence, made a synopsis of the whole expenditure for the purposes of the election under different heads.

Mr. Harrison's first proposition is that the election is void by the profligate expenditure of money, for which respondent is responsible, and which had the effect of corrupting the whole constituency, so that the election was not free. On this subject Baron Martin, in the *Bradford case* (19 L. T. N. S. 725), said: "If it had been proved that there existed in this town generally bribery to a large extent, and that it came from unknown quarters, that no one could tell where it had come from, but that people were bribed generally and indiscriminately; or if it could be proved there was treating in all directions on purpose to influence voters, that houses were thrown open where people could get drink without paying for it; by the common law such election would be void." In reference to undue influences, he said: "Amongst these influences are what are called bribery, treating, and oppression—that is, an improper and undue pressure put upon a man. But if pressure is put upon a man, or a bribe is administered to him, no matter by whom, or refreshments are given to a man, no matter by whom, for the purpose of affecting his vote, the effect is to annihilate the man's vote, because he gives his vote upon an influence which the law says deprives him of free action; he becomes a man incompetent to give a vote because he has not that freedom of will and of mind which the law contemplates he ought to have for the purpose of voting."

In the same case (1 O'M. & H., 33), Baron Martin, in referring to treating, said: "It is proved that there were

open in this town, by persons for whom it is admitted respondent was responsible, 158 public houses, and that in 115 of these public houses refreshments were supplied. Counsel for respondent stated that these refreshments were supplied to people who had done work, but the evidence is directly to the contrary. The evidence is that persons were admitted to these committee rooms; that the farce was gone through of putting down their names as committee-men; and that refreshments were supplied to them whether they were voters or non-voters, or messengers. It is proved by respondent's own witnesses that directions were given, that at these public houses refreshments were to be afforded to the persons who came there, and that they were afforded both to voters and non-voters, and to any person admitted to the room, with the caution that they should not be excessive, but reasonable;" and under the English Act that was sufficient to avoid the election.

In the *Bewdley case* (1 O'M. & H., 16), it was proved that the respondent deposited as much as £11,000 in the hands of one Pardoe, directing him, in his letters, to apply that money honestly, but not exercising, either personally or by any one else, any control over the manner in which that money was spent; in fact, not knowing how it was spent. Upon that Mr. Justice Blackburn said: "I can come to no other conclusion than that the respondent made Pardoe his agent for the election, to almost the fullest extent to which agency can be given. A person proved to be an agent to this extent, is not only himself an agent of the candidate, but also makes those agents whom he employs. . . . An agent employed so extensively as is shown here makes the candidate liable not only for his own acts, but also for the acts of those whom he, the agent, did so employ, even though they are persons whom the candidate might not know or be brought in personal contact with."

It is contended that I ought to set aside this election in consequence of the profuse expenditure of money by the respondent and his agents.

In the *Bradford case* an unlimited amount was placed at the credit of the respondent's agent for the purposes of the election, of which he spent £7,200. There were 158 public houses kept open by persons for whom the respondent was responsible. In the *Bewdley case* there was £11,000 placed in the hands of the respondent's agent. An insufficient return of the expenses by the respondent's agent was held sufficient knowledge on his part of corrupt practices.

The evidence did not impress me with the conviction there was any particular recklessness of expenditure to indicate general corruption of the electors. There was no keeping of open houses during the period of the canvass, no such general treating as would, under the provisions of the English Act—which contains a special provision on the subject not contained in our own statute—be considered a violation of the law, and certainly none that at common law would be considered as evidence of bribery to avoid the election.

It is said that the respondent himself, when canvassing, on three or four occasions stopped at a public house and there obtained refreshments of some kind; at one place ginger-beer and then soda-water; a third, a cigar, a fourth, a glass of wine, for which sometimes he paid, at others those who were with him; and that these have to be considered corrupt practices within the meaning of our statutes. I do not doubt but treating may be carried to such an excess as to verge on bribery or undue influence at common law, and in that way make it proper to set aside an election. I do not think such excess was shown in relation to the respondent here. The treating by the parties who canvassed for respondent was also referred to. It seems to me that what they stated on that point was, that the canvassing was generally done in the evening by and amongst a class of men who usually, as a matter of courtesy, when they meet ask each other to drink, and when drinking it is usual also to ask such of their acquaintances as are then present to drink also. It did not

strike me that the expenditure in this way was large, or that there were the usual indications of excessive drinking exhibited in the range of this canvass; we hear of no quarrels or unpleasant disputes which usually accompany excessive drinking. In this respect, therefore, I do not see my way clear in interfering.

Another objection urged is the large amount paid for refreshments to committee-men. Furnishing refreshments to committee-men as such, whilst engaged in their work, will not *per se* be considered as given for the corrupt purpose of influencing their votes; they are employed as committee-men because they are known to be favorable to the candidate. People must eat during election time, and if men are employed in this work as committee-men, giving them refreshments under these circumstances does not imply that it is done in order to influence their votes. The largest amount for refreshments appears to have been disbursed by Dr. Howson, and that was for St. Andrew's committee and for the central committee; the whole amount was \$43. The committees in organization two or three weeks before the election, say two weeks, are not generally very large, and if the average attendance of committee-men in the central and St. Andrew's Ward committees united was 14 or 15 persons per night of the 12 nights of two weeks, and they all got refreshments, the \$43 would not pay more than the rate of 25 cents for each person, which would not be very extravagant. Even if there were fewer persons attending, the amount would not seem unreasonably large. The amount of \$23 expended in St. John's Ward included the refreshments furnished to the canvassers' agents, and committee-men, on the day of election. The refreshments during the day of the election at the polling places were distributed amongst all who were then engaged, as well the Deputy Returning officers and their clerks, as the scrutineers and agents on both sides. I think the decided cases show this, the furnishing of refreshments, not improper.

Another ground of objection was, that the hiring of cabs and carriages before the election (those hired on the day being subject to further observation) showed a profuse expenditure, and therefore evidence of bribery.

There was nothing came out in the evidence to induce me to suppose that more than the usual and proper amounts were paid for the use of these carriages.

There were, I understand, 32 polling places in the electoral division. In order to secure the proper organization of committees, selection of scrutineers, the printing and distribution of handbills, voters' lists, preparing and distributing the books to be used by scrutineers and canvassers—all of which seem to be fair and legitimate objects, and reasonably necessary to be attended to by a candidate who wishes to prevent fraud—great activity was required; to get over the ground as speedily as possible, and complete the organization with the least possible loss of time, the use of carriages and vehicles of that sort seems to have been absolutely necessary; and I cannot say the number of persons employed for the purpose, or the amounts paid, are so extravagant as to convince me that this expense was used with a view of corrupting the parties employed or improperly influencing votes.

Exception was taken to the payment of canvassers who were electors, and also for distributing, posting bills, &c. Mr. Justice Willes, in the *Coventry case* (1 O'M. & H., 101) uses this language: "But the candidate may pay his own expenses, and the candidate may, paying his own expenses, employ voters in a variety of ways; for instance, he may employ voters to take round advertising boards, to act as messengers as to the state of the poll, or to keep the polling booths clear. He may also adopt the course which appears to have been adopted in this city, that is to say, the city or borough is divided into districts, and committees are formed amongst the voters themselves of selected persons, who go about and canvass certain portions of the district; and for these services these persons are sometimes paid, and sometimes not paid. Now, un-

questionably, if the third clause of the second section was to be taken in its literal terms, the payment to canvassers under such circumstances, being as it is a payment to induce them to procure votes by means of their canvass, would come within the terms of this clause, and would avoid the election."

We have therefore a test supplied of the meaning of the third clause of the second section (the same as our own statute 32 Vic., c. 21, s. 67, subs. 6), by means of which we see that it was not intended by this section to do away with every payment made by the candidate in the course of the election. And to come more nearly to the present case, it affords a test whether this third clause was intended to prevent every payment to persons for assisting the candidate in obtaining the election. He refers to the *Tamworth case* (1 O'M. & H., 79), when he had occasion to review the cases in which the employment of voters had come before the election committee. With respect to canvassers he referred (p. 102) to the *Lambeth case* (Wolferstan & Dew, 129), where "it was held that the system of dividing the boroughs into wards, and forming committees amongst the voters, and employing them to send out canvassers, was not objectionable, notwithstanding that there was a payment made to the canvassers for their services in canvassing. It is hardly necessary to point out how exceedingly dangerous the adoption of that system is both in respect of the payment of canvassers and also in respect of that which has been held lawful, viz., the supply of fair refreshments to unpaid canvassers, whilst engaged actually, and not colorably, upon work, and in like manner of refreshments to committee-men. It is proper, whenever this system is referred to as not being unlawful in itself, to say that it exposes members to very great danger, and when it is merely colorable, it would avoid the election; I refer to these cases to show that it is not every payment for the purpose of procuring a vote that can be held within the third clause of the second section. . . . You must show an intention to do that which is against

the law before you bring the case within any of those highly penal clauses of the Act." The cases referred to by the learned judge are the *Tamworth case* (1 O'M. & H., 79), and the *Leicester case* (1 Power, Rodwell and Dew, 178), where it was laid down that the *colorable* employment of voters under the pretence of giving them wages for services which were not rendered is bribery, and that the colorable employment of voters for the purpose of inducing or enticing them to vote for the candidate who employs them, is bribery. On the same side of the question is the *Oxford case* (Wolferstan and Dew, 109), and the *Hull case* (Wolferstan and Bristowe, 87). On the other side there are various cases in which the committees came to the conclusion that the employment of voters was not colorable; in some, because the services, though not rendered, were expected by the candidate or his agent to be rendered, and in others because the intention to bribe was negatived by the circumstance *that service was contemplated by the candidate or his agent, and that it was only by reason of the misconduct of the voters employed that it was not rendered*. The most remarkable of these cases is the *Cambridge case* (Wolferstan and Dew, 23, 41) when Mr. Deasy (now Baron Deasy) delivered a reasoned judgment. There is also the *Lambeth case* (Wolferstan & Dew, 129), where the committee decided that the system of organized canvassing proved to have existed at that election, accompanied by the payment of the canvassers, was, under the circumstances, legitimate, though payments were made to the voters who were employed in the course of the system. In the *Preston case* too (Wolferstan and Bristowe, 76), the committee declined to set aside the election on the ground that the system had been resorted to.

The 26th section of the English Parliamentary Elections Act, 1868 (similar to section 30 of our Act 34 Vic., c. 3), provides that "the principles, practice and rules on which Committees of the House of Commons have heretofore acted in dealing with election petitions, shall be observed so far as may be, by the Court and Judge in the

case of election petitions under this Act." This directs the Judge to act on the principles upon which election committees have acted when he has no light from the rules which his own professional experience supplies him with.

I take it the Judges here are called upon to act on the same principles ; and in addition they are bound by the decisions of the Rota Judges in England sitting for the trial of controverted elections under acts similar to our own, in the same way as we feel bound by their decisions in relation to other legal matters.

In reference to the sums paid by Mr. Hime to McLellan, McQuinn, McGee, McGrath and Wimberton, the last not a voter, he states that these sums were paid to them to cover their expenses in canvassing, &c. ; Wimberton got an additional \$5 to pay him for acting as scrutineer. It is said these parties were not called to show how they had expended the money. *Primâ facie* it was paid for what, according to the above decisions, if *bonâ fide*, was a legitimate purpose, and if the petitioner wished to show it was corrupt, the onus of calling the witnesses to show it seems to be on him. (*Lichfield case*, 1 O'M. & H., 23.)

The expenditure by Graham of the \$40 entrusted to him, it is contended is not satisfactorily accounted for. In his evidence Graham said the \$40 was given to him as chairman of a sub-committee ; he thinks there were eight or ten of the sub-committee. Mr. Hime asked him what he thought would be necessary for the usual expenditure in the east end ; he told him he thought \$40 would do ; he would require the money to give to canvassers to pay their necessary expenses ; all the members of the sub-committee were canvassers : Patrick Smith and James Walsh, of Dummer Street, William Mulligan, McGaw, Mr. Gossage and Mr. Ford, Ald. Dickey, and some man connected with the foundry ; he thought he gave Ford, \$3 ; Mulligan, perhaps \$4 ; McGaw, \$2 or \$3 ; Jas. Walsh, \$7 ; he said in consequence of his living on Dummer Street, he would want more ; is not sure he asked for \$7 ; he thought

that would be necessary ; could not say why his expenses were more than the man who lived on Caer Howell Street, McGaw ; he said he would vote for Mr. Crooks before he paid him any money ; believed he voted at the former election for Mr. Crooks ; gave Patrick Smith \$7 for his ordinary expenses ; he did not know to whom he paid the remainder ; never kept an account ; did not know he would be called to account for it ; Mr. Hime told him to use the money in a fair, square way, meaning, as he understood, without treating or bribing, or any but for expenses.

On the Saturday night before the election, Smith and Ryan said they wanted to do all they could, and would do all they could. On the evening before the election they met at Mr. Gossage's house ; they said they got on well and would be down next morning. Next morning Walsh came and voted for Wallis. Before that he pretended he was doing all he could for Mr. Crooks. Smith said he had canvassed for them. He did not use a book ; he knew all the voters. They both told Mr. Gossage they were doing all they could for him. He paid ordinary expenses in going about canvassing himself ; can't say how much he expended ; thinks it possible he may have spent \$1.50 a night. He says he may have spent \$21 in treating. When he gave Walsh and Smith the money he believed they were honestly on Mr. Crooks' committee, and intended voting for him. He paid them the money without the slightest intention of inducing them to vote for Mr. Crooks. They told him before he gave them the money they had been working for Crooks, and doing all they could, and wanted a little money to pay their expenses. At the meeting at Mr. Gossage's it was arranged they should bring up voters for Mr. Crooks—those that lived in that locality ; they did not discover that Walsh was against them until he voted on the morning of the election for Mr. Wallis ; Mr. Gossage on that wished Smith sworn, and he refused to take the oath ; the others to whom he gave the money had been working a week before for Mr. Crooks, as he knew ; the money was given

them without the slightest intention of influencing their votes; he was told at the beginning not to spend any money for that purpose. On re-examination he said they never gave an account of the expenditure of the money, and he never asked them for one.

Mr. Graham's account of how he disposed of the money placed in his hands is far from satisfactory; but as already intimated in a previous case, I do not, in the present state of the law on the subject, feel at liberty to infer from that fact alone that he has spent it for the purpose of bribing electors, or other corrupt practices. The money, I have no doubt, was given him in good faith, to be expended, properly and legally, for the purposes of the election; whether he has spent it all or not, the evidence does not satisfy me. But I have to decide whether the money has been spent for bribery. As to all the persons objected to, to whom Graham paid the money, I do not think the evidence points to any, as to whom, on the principles on which I think I am to decide this case, I can say they have been bribed. The only two about whom the most serious discussion has taken place are Walsh and Smith. The first point is, that the money was paid to them as representing a particular religious denomination, to influence other voters belonging to the same church as they did. That may be an argument to show why the money was paid to them, but if the employment of a voter *bonâ fide* to canvass is not illegal, and the cases show it is not, the mere fact that such voter has skill or knowledge and capacity to canvass, would not make his employment illegal; nor would the fact of the canvasser being of the same trade or business, or of the same rank in life of a class of electors, make such employment corrupt. If they were subjects of Her Majesty who only understood the French or Celtic languages, employing a canvasser familiar with those languages, could not be improper. Then why, because he happens to be of the same country and religion? In the *Bradford case* (1 O'M. & H., 32), it was proved that a number of persons who were known to

have influence with the Irish voters, of whom there were many in the borough, were paid on behalf of the respondent to use their influence with these voters to restrain them from voting against the respondent. Baron Martin said: "There were a number of voters whose support it was deemed desirous to obtain, and money was given to a few persons to exercise their influence on those persons to induce them to refrain from voting. That seems to me to come within the very words of the statute. It was quite different from canvassing, from paying a person for his labor, and for using such persuasions as were lawful when inducing a voter to vote." It is contended here that these men were employed to use such persuasions as were lawful to induce voters to vote, not to restrain them from voting. On this point I think the objection must fail. But the question still remains, was the money so paid to these parties really paid to them to canvass and otherwise exert themselves for the respondent by looking after votes, or to pay their expenses while doing so. If the case depended solely on Graham's evidence, I might have more difficulty to decide; looking only at the evidence of Graham, Smith and Walsh, it is very manifest that they were, by their conduct and actions, giving Graham to understand that they were in favor of Mr. Crooks, and this before the money was paid them; and the observation of one of them that a little money in election time was allowed for knocking around, and the whole nature of the evidence, satisfies me that Graham was convinced they were supporting his candidate. He undoubtedly thought they were proper persons to employ to canvass on Dummer Street, and considered the observation as to money when knocking around in election times meant when going about to solicit votes. Graham says, before he gave them the money they told him they had been working for Crooks, and doing all they could, and wanted a little money to pay expenses, and he gave it to them. It is suggested the amount indicates more than would be necessary to pay the expenses; \$5 was given to

other parties to pay their expenses, and \$7 to each of these two. He said Walsh stated that in consequence of living on Dummer Street he would want more; he thought that would be necessary, but could not explain why it should be more than the men who lived on Caer Howell Street received. I cannot tell whether the canvass of the portion of the division that these two persons were expected to overlook, would necessitate a larger or less amount than was given; if these men were laboring men and could not afford to lose any money paid out by them, and were to be paid anything for their time; if they were considered to be active members of the committee, and were to look after and bring up votes on the day of election, I cannot say that the \$7 each appears to me to be so great that I will assume it was intended to bribe these men to vote for Mr. Crooks, when the man who gave it to them positively denies any such intent, and when he had every reason to believe that they intended to support Mr. Crooks before he gave them the money. Though I am not satisfied with Graham's account of how he disposed of the money, I certainly would be more inclined to believe his statements than I would theirs when they conflict. It does not appear very clearly how it was that the money was paid to their wives. If they were not at home at the time there would be nothing singular about that, and even if they were present, one can scarcely see any particular reason why it should be so paid unless it might be thought that payment to the wife would enable them to deny it if they wished to do so. This matter came out on the evidence of these two persons after Graham had been examined. He was not recalled to explain it, and although it might have borne an unfavorable interpretation, it is not inconsistent with being done without any improper motive. The matter was not sufficiently inquired into to enable me to say, with any certainty, that there was anything wrong about it.

When, however, the cross-examination of Walsh and Smith is referred to, and the evidence of Mr. Gossage and

Mr. Ford, the statements of the former are certainly not to be relied on, and they impressed the two last named witnesses, as well as Mr. Graham, with the conviction that they were ardent supporters of Mr. Crooks. As to Walsh and Smith, on the principles on which I feel bound to act in these matters, I do not think the evidence will warrant me in holding that Smith and Walsh were bribed, though, in fact, they may not have rendered services for the money they received. Their services were expected by Graham to be rendered when he paid the money, and they were not rendered by reason of the *misconduct of the voters employed*. (See reference to the decided cases on this subject already referred to in Mr. Justice Willes' judgment in the *Tanworth case*, 1 O'M. & H., 79).

These observations will apply with equal force to the case of George Evans.

Mr. Hime, the gentleman who gave the \$10 to Evans, gave his evidence in a frank, straightforward manner, and seemed to me to be stating the truth. He said he was to take charge of the west end, and employ others to assist him. He told parties when he gave them money that none of it was to be expended in treating or influencing voters, but it was to pay their own personal expenses. I do not think under these circumstances I can infer bribery. The impression on my mind is, that it was given to Mr. Evans believing him at the time to be a warm friend of Mr. Crooks, to be expended in paying proper expenses whilst he was endeavoring to secure Mr. Crooks' return. If Mr. Evans, instead of expending the money for that purpose, kept it himself, I cannot infer from his misconduct that it was given to him as a bribe, and not for the services he undertook to render.

This brings me to the last case of bribery—James Landy.

Landy claimed that there were three dollars due him for driving for Mr. Crooks at the former election; that he was employed by Mr. Jaffray, and when he applied for the pay some weeks after the election, Jaffray said he

ought to have applied before ; that the accounts were made up, and he could not pay him. At this election, when spoken to to vote, he said he did not think he should vote, and was evidently putting forth the \$3 that were due him as a grievance. There was evidence that Mr. McDonald, who acted as treasurer of the committee for St. John's Ward, told him that would be made right, and finally Ryan, a clerk of Jaffray's, who was the chairman of the committee of the ward, gave him his word that he would pay him; after that he voted, and some week or two after the election Ryan paid him, and the amount so paid was entered in the account which Jaffray had against the committee for refreshments furnished to scrutineers, committee-men, etc., in St. John's Ward on the election day already spoken of ; it was an isolated entry : for James Landy, \$3. The refreshments were got by Jaffray because McDonald, the secretary of the committee, had some difficulty in procuring the supplies. Jaffray said he never gave Ryan any money to give to Landy, but after the election was over he believed McDonald did. Ryan was not on the committee for St. John's Ward. Ryan said that he got the \$3 to pay Landy out of Mr. Jaffray's till. He did not think Mr. Jaffray knew it. McDonald repaid the amount to Mr. Jaffray about a week after the election. He said he paid the money to Mr. L., and when the account for cheese, biscuits and other articles supplied to the committee was made up, he included the \$3 in it. He was doubtful if he told Mr. McDonald of the entry of this payment, independent of the entry in the account. He said he was not on Mr. Crooks' committee, and was not instructed to take any part in the election. What he did was of his own free will, except that Mr. Jaffray asked him to drive the carriage he was entitled to as chairman of the committee that day. He thought Mr. Jaffray asked him to call on Mr. Brown and solicit his vote for Mr. Crooks, and he was the only person Mr. Jaffray asked him to solicit to vote ; he did not mention Landy's name to him at all ; he made

a note of payment to J. Landy of \$3, without mentioning what it was for ; he had no authority from Mr. Jaffray to pay out money on account of the election. Mr. McDonald, on being recalled, said that after the conversation said to have taken place in Landy's house, when he was present, in which it was said he intimated to Landy that his claim for the prior sum would be made right, he had seen Landy and told him positively that he should not and could not give one cent of his claim to gain the election ; he said that when he was settling up the accounts about the election, he requested Mr. Jaffray to have his account made up, and when he came in in the evening the account was made up ; the amount was mentioned, \$26.26 ; he paid it, believing it was all right. At that time he did not know the item of "paid J. Landy \$3," in the bill, was for paying the old claim Mr. Landy had ; about a week or two after he examined the bill, and saw the charge of payment of \$3 to Landy in it ; he did not take particular notice of it then.

I do not think Ryan can properly be considered an agent to bind the respondent by his acts. He was not employed as a canvasser generally by any one, and the only person he was asked to canvass was Mr. Brown. Mr. Jaffray asked him to call on Mr. Brown and solicit his vote for Mr. Crooks ; but Mr. Brown had promised Wallis, and voted for him. This appears not to bring Ryan as an agent within any of the views of agency laid down by Mr. Justice Willes in the *Bodmin case* (1 O'M. & H., 120) : "It might be limited to the case of a person who was employed to canvass a particular voter or particular voters only, and then that person would be one whose authority being limited to such voter or voters, his illegal act in respect of others could not affect the member, because he would be only an agent in that particular limited capacity." He must be an agent employed by a member to canvass. There is no pretence that Ryan did in fact canvass generally. In the *Westminster case* (1 O'M. & H., 96), as to the conduct of the son

of one Hotton, Baron Martin said: "His may be a strong case; but, although young Hotton seems to have been active with regard to the election, I cannot hold that an act done by him because his father was a person for whom the respondent would be responsible, would make young Hotton also;" I do not think respondent would be responsible for the conduct of Ryan, even if he had been more active; the only question is whether respondent can be held responsible for Ryan's act because McDonald paid the money, and therefore ratified Ryan's act and agency in making the promise. In the *Tamworth case*, Justice Willes said: "But the rule is plain that a ratification after the act is equivocal to an authority given at the time. The rule is also plain as limited to the case in which the principal, the person sought to be made liable as principal, is acquainted with the character of the act at the time when he ratifies." Was McDonald at the time he paid the money aware of the reason and purpose for which Ryan had paid it to Landy? He says he was not; that when he paid the account he did not observe that it was there; and when he saw it about two weeks afterwards, it did not occur to him it was for a payment of the kind it turned out to be. There is nothing to show that he had been informed by Ryan of the nature of the services for which Landy had been paid, nor is there anything to show he was aware that Ryan had had any intercourse with Landy to induce him to suppose it could have been paid for any objectionable matter. It is suggested that it was strange Mr. McDonald did not inquire of Mr. Jaffray in paying the bill what all these charges were for. The answer he gives is that he had every confidence in Mr. Jaffray, that he would only put down what was right, and Mr. Jaffray he supposed, knew, being chairman of the committee, what was required, and that he had confidence he only got that, and paid for what was got. As to this case, I do not think I can properly set aside the election.

The remaining question is as to the hiring of conveyances by the respondent to be used on the last day of the

election, and the volunteering by certain cabmen of their cabs for the carrying of voters to the polls on that day. The 71st section of our statute 32 Vic., cap. 21, after reciting "that doubts may arise as to whether the hiring of teams and vehicles to convey electors to and from the polls, and the paying of railway fares and other expenses of voters, be or be not according to law," declares and enacts "that the hiring or promising to pay, or paying for any horse, team, carriage, cab, or other vehicle by any candidate, or by any person on his behalf, to convey voters to or near, or from the poll, or from the neighborhood thereof at any election, etc., etc., shall be illegal acts."

[The CHIEF JUSTICE then referred to Mr. Cattanach's evidence on this point, before referred to, and said]:

The only case I have met, in which a circumstance at all similar is referred to, is in the *Longford case* (2 O'M. & H., 14). It was proved there was considerable difficulty in providing conveyances for voters living at a distance to go to the poll, and that certain voters who owned cabs were induced to lend them for the conveyance of other voters, and were paid for so doing; it was contended that these payments to voters were colorable payments, and the reward to them for voting or to induce them to vote. The learned Judge (Fitzgerald), after stating that he had come to the conclusion that this was not a colorable proceeding, said: "I think it was a step of a very dangerous character; it brought the parties to the very verge of the law, and it would have required very little, if payments were actually made, to come to the conclusion that they were made to influence the vote, and so to void the election on the ground of bribery."

If the money had been paid in the case before us, no doubt the inference against the respondent would have been much stronger; but acting on the principle before mentioned, I do not feel justified in holding the proceeding to have been colorable.

Then as to the hiring of the carriages at Bond's for the use of the committee-men and canvassers on the day of

the election. These carriages were not hired for the conveyance of voters to the poll, and instructions were given to the drivers that they were not to be used; but from the evidence of Ryan, the one sent to St. John's Ward was used for that purpose most of the day. He said he did not think Mr. Jaffray mentioned that they were not to take Osler in his carriage, but he did hear him say that no voters were to be taken to the polls in hired buggies, carriages, or cabs. The carriage was one of Bond's, but he understood it was the chairman's carriage. Jaffray himself was not asked anything about voters being brought up in the carriage.

I cannot infer that these carriages were colorably hired for the purpose of bringing up voters; that one was so employed more or less is evident; but it is not clear that it was so used with the assent of Mr. Jaffray, and therefore such an illegal act on his part as would avoid the election, as his hiring one carriage or using a hired one for that purpose would have that effect.

I am not prepared to hold that the election is void on the ground of the employment of these carriages by the respondent on the morning of the election. In the *Salford case* (1 O.M. & H., 133) it was proved that a considerable number of cabs were hired for the respondents, not for the conveyance of voters to the poll, but for the canvassers to go into the places where the voters were at work, the canvassers then walking up to the poll with the voters. It was not proved (although it was alleged) that in many instances voters were conveyed in the cabs. The fourth allegation in the petition in that case was that the respondents did, by themselves and other persons on their behalf, hire and engage and pay money for and on account of a number of conveyances for the purpose of conveying voters to the poll, and which were used for such a purpose on the day of the election in their interest. In giving judgment, Baron Martin said: "I have already stated, if I considered the allegation proved I should reserve the point for the Court of Com-

mon Pleas; but after the evidence of the respondent, Mr. Cawley, and others, I could not state as a fact that the conveyances were hired for the purpose of conveying voters to the poll." Baron Martin said, in the same case, in reference to section 36 of the English Representation of the People Act, 1867, "it showed as plainly as possible that the intention of the Legislature was that voters should either walk to the poll or go in their own carriages. The Legislature has made most stringent provisions as to having polling places in the most convenient places in boroughs for every voter. The intention is to prevent the hiring of conveyances for voters, and to provide that people should walk to the poll or go in their private carriages, and it seems to me it is the same thing whether a man rides in a private carriage provided for him or comes in a hired carriage." Our statute is not in terms like the section to which he was referring, and I am not prepared to say that a man who has a carriage may not, if he chooses so to do, take any of his neighbors to the poll with him, provided it is not done colorably, and with intent to charge for it, or to bribe the voter. As to the hiring of the carriages by Mr. Crooks, I cannot find, as a fact, that he intended at the time of the hiring, they should be used to convey voters to the polls, or that Mr. Jaffray so intended to use them.

There are two cases, Thompson's and Halligan's, referred to. As to James Thompson, he at first seemed to be acting for Wallis, but afterwards changed and became a member of Mr. Crooks' committee. His own account of his reason for changing is not satisfactory, and his statements afterwards made to Mr. Dodds were not of a character to induce any one to suppose that his motives were purely patriotic in changing. Mr. Cattnach stated that he was not aware that Thompson had been acting on Wallis's committee until he heard him state it in his examination. The first Mr. Cattnach knew of him was as a professed supporter of Mr. Crooks. He never spoke to him about getting his vote, or getting him to canvass. He promised him nothing before the election, and when

he paid him the money he represented that he had been exclusively employed for some days canvassing. He had met him both in the daytime and at night; in the daytime canvassing, and at night in the committee-room. He also said he knew what Thompson had done in the way of canvassing—how much he had gone about—and though he charged \$10 he only paid \$5, which he considered his legitimate expenses. As to Halligan's evidence, it is not at all satisfactory. Mr. Cattanaach said he canvassed for Mr. Crooks; he applied for a larger sum than \$10; said he had been working for Mr. Crooks; spent money necessarily in what he was doing; wanted Mr. Cattanaach to pay him; wanted more than \$10; he said his disbursements had been \$10 for necessary refreshments; Mr. Cattanaach inquired immediately how he had spent the money; was satisfied he had not spent the money for illegal purposes; he knew he had been very active; thought the sum not unreasonable, and paid him \$10.

I believe I have gone over each particular point and case made, and referred to by Mr. Harrison in the argument, and if I have not expressly decided each by name I think I have in effect disposed of them all. I believe I have not expressly mentioned the amount paid for the repair of the mission house, which was injured whilst Mr. Crooks was holding a meeting there. I see no reason why in law or justice this should not be paid.

In deciding under the statute, the first question I had to consider was, did the respondent really desire to obey the law and carry it out fairly, and did those for whose acts he is responsible desire to do so. I have come to the conclusion that they so intended. Mr. Crooks himself took a good deal of trouble to have the law explained and circulated amongst the electors generally, and I have no doubt desired to obey it as he understood it. Mr. Cattanaach I have no doubt was influenced by the same motives, and I think they acted in this view, and the subordinate agents also, so far as not intending to resort to illegal practices. I cannot say but many of the things

done during the canvass and the election, brought out in the inquiry, created a great deal of hesitation and doubt in my mind how far I ought to consider these acts colorable or not.

It would be very easy to dispose of this and other similar cases, whenever anything questionable may arise, to take the most unfavorable view of it, and at once consider that any act that was at all questionable was evidence of such a corrupt practice as would avoid the election. Take the case, for instance, of money placed in the hands of an agent to disburse for proper legitimate purposes; when called on to explain what he has done with the money, if he fails to tell how he has spent it all, to whom he gave it, and for what purpose, then that I am to infer he spent it for bribery, and therefore set aside the election. In construing a statute of so penal a character as this I do not feel at liberty to pursue such a course; in fact, as already intimated, I consider myself, under the words of our statute, called upon to act upon the principles upon which election committees have acted in relation to these matters, and that I am bound by the decisions of the Rota Judges and the Courts, in the same way as I would be in disposing of cases of common law. In my judgment in the *East Toronto case* (a) I have cited the strong language used by Baron Martin in the *Wigan case*, where he refers to the necessity of establishing the acts to unseat a candidate to his entire satisfaction, though much may have been done at the election of which he disapproved. The doctrine seems to be well established through most of the cases, that to upset an election a Judge ought to be satisfied that the election was void, and that the return of a member is a serious matter, and not to be lightly set aside. In the *Londonderry case* (1 O'M. & H., 278), Mr. Justice O'Brien said: "The charge of bribery, whether by a candidate or his agent, is one which should be established by clear and satisfactory evidence. The consequences resulting

(a) Page 96, *ante*.

from such a charge being established are very serious. In the first place it avoids the election, and in the *Warrington case* (1 O'M. & H., 44), Baron Martin is reported to have said that he agreed with what had been said by Mr. Justice Willes at Lichfield, that before a Judge upsets an election he ought to be satisfied beyond all doubt that the election was altogether void. In the next place the 46th and 49th sections of the Controverted Elections Act 1871, impose further and severe penalties for the offence, whether committed by the candidate or by his agent. Mere suspicion, therefore, will not be sufficient to establish a charge of bribery, and a Judge in discharging the duty imposed upon him by the statute, acting in the double capacity of judge and juror, should not hold that charge established upon evidence which in his opinion would not be sufficient to warrant a jury in finding the charge proved. There may be cases where there is evidence to go to a jury, and on which they are to decide as to the effect it has on their minds and come to a conclusion, but in which if the Judge were sitting as a juror he would find for the defendant; and I apprehend in such a case he ought to find against the bribery.

Baron Martin in the *Westminster case* (1 O'M. & H., 89), laid down the doctrine that in those cases the Judge ought to be satisfied beyond all reasonable doubt. In that case £209 were expended in paying shopkeepers at the rate of 7s. a week for allowing boards with posters to remain in front of their windows. Inquiry being sought as to that point, he said, p. 90: "For me to decide that the respondent is incapable of being elected by reason of these boards, I must be satisfied that when these boards were issued there was in the mind of the respondent's agents the intention that the payment in regard to them was to be, not for the purpose of compensating the persons for exhibiting them, but to be a benefit given to these persons in order to induce their votes. That I am not satisfied of." I refer to these cases to show the necessity of a clear case being established before an election is set aside.

I have disposed of the question as to the employment of cabs and teams on the merits, without deciding whether, for the mere employing of a vehicle to convey voters to the poll, I should order an election to be set aside. I have no doubt there may be such an employment as would produce that effect, and Baron Martin, in the case already referred to, stated if it had become necessary to decide that point he would have referred the question to the Court of Common Pleas, though the English Act by no means in terms implies that the violation of it would set aside the election.

The course pursued in this election, and also in the East Toronto election, of placing money in the hands of agents or committee-men, without taking the precaution of seeing that it was all properly expended according to law, if continued, will probably induce Judges hereafter to take the view most unfavorable to those who thus place the means of bribery in the hands of subordinate agents. The employment of electors as paid agents of any kind is always hazardous, and must often, if continued, lead to fraud. Many of the parties so employed, it is said, were paid merely their expenses. If it is expected that Judges are to decide that payments made for that purpose are to be recognized as *bonâ fide* and not colorable, each person should be prepared to show and prove what his expenses are that he has paid, otherwise the Judge will be likely to infer that he is paid for his services besides. But if paid for services as canvasser, scrutineer, or other services of a similar character, he does not seem entitled to vote under sec. 3 of our statute (32 Vic., cap. 21). I should have felt very much embarrassed if I had been called on, in the event of a scrutiny, to decide how many of these voters who received pay for their expenses satisfied me that they had really expended the sums they had received. I have not felt warranted in taking an unfavorable view of the omission to show the expenditure of all sums placed in the hands of subordinate agents, because the rule has not obtained in this country that prevails in

England, of having all these payments made through the hands of an agent, and where parties understand that it is necessary to show with reasonable certainty, by accounts in detail, the amounts they have actually expended, and what for. But hereafter it is most probable parties will be held to a more strict accountability in this respect.

In my own opinion, to make these expenditures of money during elections at all satisfactory, the same rigid care and responsibility should be demanded in its expenditures, and in the production of vouchers therefor, as are required in the ordinary business transactions between man and man; that because a man is a candidate at an election, he shall not be compelled to make a profuse expenditure of money to satisfy the appetites of a few cormorants, who, under the pretence of being his friends, may be really fleecing him under pretence of paying out his money for the legitimate purposes of his election, or others who may be feasting at his expense under the pretext of devoting themselves to his services without pay or reward.

The getting cabmen to volunteer the use of their cabs to bring voters up to the polls on the election day is another practice which, if followed up, will be likely to lead to great abuse. Here I have no doubt that Mr. Cattanaeh and the other gentlemen who intimated that this course might be adopted, honestly intended what they said to the owners of cabs, that they would not be paid for their use. But did the cabmen themselves believe that was *bonâ fide*? Every one of them, I believe, sent in bills claiming pay for these days. It is true the payment of these bills was refused; but if the practice be persisted in it will be difficult to justify it. The question will always be open for discussion, and the previous employment of these parties, and the rate at which they were paid, will be inquired into to see whether what seems a free offer on their part is not in truth merely working for the pay they have received, or expect to receive. As to the hiring of carriages for the use of committee-men, if many of these are engaged, and they are really used for carrying voters,

though the party hiring them may not so intend, that will be open for discussion. It is of course very difficult, when carriages are standing in the vicinity of a polling booth, for canvassers to avoid taking them to go after voters, and still more difficult to avoid using them to bring up the voters; and if that course should be pursued to any extent hereafter, it is probable that the inference would be drawn that the reason why they were sent was not for the *bonâ fide* use of the committee-men, but to facilitate the bringing up voters, which is against the law.

The amount expended at this election seems large—about \$1,800, including some accounts not yet paid; a very large portion of the expenditure—nearly \$800—appears to have been for printing, advertising and stationery; yet the remaining portion strikes one as large and demanding inquiry.

It may be as well here to refer to the reason for the rule why candidates should be made liable for acts done by their agents. Mr. Justice Blackburn refers to it in the *Taunton case* (1 O'M. & H., 184) in these words: "The rule of parliamentary election law, that a candidate is responsible for the corrupt act of his agent, though he himself not only did not intend it or authorize it, but *bonâ fide* did his best to hinder it, is a rule that must at all times fall with great hardship upon particular persons. But I may just mention the considerations which, no doubt, led the common law, as I may call it, of Parliament to establish it. Corruption, as we all know in practice and in fact, is seldom or never done by the hand of the candidate. The two modes in which it was found in practice that corruption was carried on were these: persons were put forward to do all the work of canvassing and conducting an election, and these persons acted corruptly; but the candidate purposely kept himself out of the knowledge of anything about the matter, so that he might have the full benefit of their services; and were it not for this rule which has been established, he would not suffer for their misdeeds. That is one of the great reasons.

Another great reason would be that no doubt people were put forward as to whom the candidate was carefully kept from knowing they were spending any money, or doing anything, with the notion, according to the loose morality that prevailed in election matters, that when the time for petitioning was past, those persons might come to him and say, 'I did spend that £1,000 for you upon the election; of course I did not tell you about it, or say a word about it at the time, but now you are bound in honor to repay me that £1,000 of which you had the benefit;' and which, in point of fact, the candidates did feel themselves bound in honor to pay. This, therefore, was another reason for the parliamentary law declaring that the candidate should be responsible for the act of his agent."

I think, under the decided cases and the rules applicable to these trials, that I ought to hold that the respondent was duly elected. I am of opinion, however, that it was and is for the interest of the public that the matters brought forward in this case should have been inquired into, and I shall not allow the respondent any costs. The respondent himself subscribed a large sum of money, and was aware that a considerable sum was being expended by others, and he himself directed the payment of any further amount that would be required. He was therefore cognizant that these expenditures were going on, and exercised no supervision over them, and I do not feel inclined to draw any distinction as to costs in relation to any of the matters contained in the petition.

I direct that each side bear their own costs.

(5 *Journal Legis. Assem.*, 1871-2, p. 11.)

BROCKVILLE.

BEFORE CHIEF JUSTICE HAGARTY.

BROCKVILLE, 26th to 30th June, 5th and 6th July, 1871, and 9th January, 1872.

SAMUEL FLINT, *Petitioner*, v. WILLIAM FITZSIMMONS,
Respondent.

Scrutiny—Property Qualification of Voters—Aliens.

Where a voter, properly assessed, who was accidentally omitted from the Voters' List for polling subdivision No. 1, where his property lay, and entered in the Voters' List for sub-division No. 2, voted without question in No. 1, though not on the list, his vote was held good.—*William Little's vote.*

A.'s name appeared on the Assessment Roll and Voters' List as owner, but no property appeared opposite his name; just below A.'s name, the name of B. was entered as tenant, with certain property following it, but B.'s name was not bracketed with A.'s. Evidence was admitted to show that A. owned the property next below his name, for which B. his tenant was assessed as tenant, and A.'s vote was held good.—*James Baker's vote.*

The widow of an intestate owner continuing to live on the property with her children, who own the estate and work and manage it, should not, till her dower is assigned, be assessed jointly with the joint tenants, nor should any interest of hers be deducted from the whole assessed value. Where, therefore, four joint tenants and such doweress occupied property assessed for \$900, the joint tenants were held entitled to the qualification of voters.—*Jeremiah Gilroy's vote.*

Where a husband had possession of a lot for which he was assessed as occupant and his wife as owner, but which belonged to the wife's daughters by a former husband, his vote was held good.—*Thomas Whaley's vote.*

Where the owner died intestate, and the husband of one of his daughters leased the property and received the rents, such husband was held not entitled to vote.—*Edward Leslie's vote.*

Where it was proved that for some time past the owner had given up the whole management of the farm to his son,—retaining his right to be supported from the product of the place, the son dealing with the crops as his own, and disposing of them to his own use—the son's vote was held good.—*James Caldwell, John A. Moore, and Charles Smith's votes.*

Where it was proved that an agreement exists (verbal or otherwise) that the son should have a share in the crops as his own, and such agreement was *bonâ fide* acted on, the son being duly assessed, his vote was held good; the ordinary test being: had the voter an actual existing interest in the crops growing and grown?—*Ibid.*

But where such crops could not be seized for the son's debt, the son was not entitled to vote.—*Ross Francis' vote.*

Where the agreement did not show what share in the crops the son was to have with his father, and it appeared to be in the father's discretion to determine the share, such son was not entitled to vote.—*John Johnson's vote.*

Where a father was by a verbal agreement "to have his living off the place," the son being owner and in occupation with the father, the father was not entitled to vote.—*Samuel Wiltse's vote.*

A tenant from year to year cannot create a sub-tenancy nor create a right to vote by giving another a share in the crops raised on the leased property.—*A. D. Dunham's vote.*

Where a man occupied a house as toll collector, and not in any other right, he was not qualified to vote.—*William McArthur's vote.*

An alien who came to Canada in 1850, and had taken the oath of allegiance in 1861, but had taken no proceedings to obtain a certificate of naturalization from the Court of Quarter Sessions, was held not qualified to vote.—*Alanson Bacon's vote.*

Nor was an alien, whose father had taken the oath of allegiance on obtaining the patent for his land under 9 George IV., c. 21, qualified to vote.—*George Healey's vote.*

The evidence that the parents of a voter had stated to such voter that he was born in the United States, but that his father was born in Canada, received, and the vote held good.—*Silas Wright's vote.*

The petition contained the usual allegations of corrupt practices, and claimed the seat for the defeated candidate Jacob D. Buell. The votes were: For the respondent, 620; for Jacob D. Buell, 613; majority for respondent, 7.

Mr. Bethune, Mr. J. K. Kerr, and Mr. C. F. Fraser, for petitioner.

Mr. J. Hillyard Cameron, Q.C., and Mr. J. Deacon, for respondent.

The evidence on the charge of corrupt practices is set out in the special case, p. 139, *post*.

The following are some of the material points decided on the scrutiny of votes.

WILLIAM LITTLE'S VOTE.

James Jessup, Clerk of Peace: I produce Voters' List for fifth subdivision, Elizabethtown. The voter's name is not on list five. There are six lists. I produce the Voters' List for polling subdivision four. The name William Little is on that list for part of lot thirteen in the seventh concession.

Stafford McBratney: I am Reeve of Elizabethtown. The road allowance between lots twelve and thirteen is the division line between polling subdivisions four and five. Little's land lies in polling subdivision number five.

On examining the Poll Book, it appeared that the voter voted at polling subdivision number five.

HAGARTY, C. J.—It is clear the man had a good vote, and voted in the proper division, but his name was on the

list for the adjoining division, and not on the list for his own division. The vote was not questioned at the poll. I would not willingly disfranchise a man because a mistake had been made. My impression is strongly in favor of the vote. Vote held good.

JAMES BAKER'S VOTE.

Petitioner put in the Assessment Roll and Voters' List on which appeared the name of James Baker as owner, and a blank opposite; but on the line immediately under was the entry, Benjamin Leviston, tenant, E. $\frac{1}{2}$ 35, 10, no bracket connecting the entries.

Counsel for the respondent proposed to call evidence to explain the entry, which was objected to by the petitioner.

The CHIEF JUSTICE ruled that evidence could be given to explain the entry, and to show that the voter owned the property next below his name.

William Stafford: Am Deputy Reeve. I know the lot (35 in 10 Con.); the voter owns the lot. About a year ago Leviston was his tenant, but he left before the election, and Baker has since lived on the lot.

HAGARTY, C. J.—It seems to be all brought down to the omission of a bracket in the Assessment Roll and Voters' List. I think I cannot strike off the vote. Vote held good.

JEREMIAH GILROY'S VOTE.

Jeremiah Gilroy: I live on the property. It belongs to me and my two brothers. The assessors put mother's name down as owner. Father died one year ago last December, without a will. He left seven in family. Three lived at home last year; four part of the time. My sister married, August, 1870. In spring four lived there. Last August got a deed of release from two of my sisters whom we paid off—I, William, Joshua, and my sister Mary. Three are away. No assignment of dower has been made, or anything done about dower. Mother leaves us to manage the farm. I am assessed as occupant.

HAGARTY, C. J.—The point in this case is that the property is assessed at \$900, and that four children and their mother are actually in possession. Their mother is entitled to dower, but her dower has not been assigned to her. I hold therefore that the mother should not be rated jointly with the children, who are the joint tenants; and as the property is sufficient to give a qualification to four, the vote is good.

THOMAS WHALEY'S VOTE.

Thomas Whaley: I voted on number sixteen Elizabethtown. I live in Yonge. I own part of sixteen in the fourth concession, but can't describe the part. The south end is the front. It is the rear part I own; about seventy-five acres. It is my wife's property. No one lives on it. We were married in September, 1869. She lived in Yonge. Never lived in Elizabethtown. She was the widow of Toxton. He died intestate and left four daughters. I worked on the place in 1870. It is meadow and pasture. I put up some fences, picked off stones. This was in June, part in April. Got the hay crop off in July. I was assessed as occupant, she as owner. I am not sure how my wife got it. I did statute labour and paid taxes.

HAGARTY, C. J., held the vote good.

EDWARD LESLIE'S VOTE.

Edward Leslie: I live at Prescott. I voted on property on Buell Street. My wife is a part owner. Her father bought it, and died intestate five years ago; left two children, a son and my present wife. He had a daughter, who died leaving children. I am assessed as owner.

Cross-examined: I lease the place to the tenant. My brother-in-law at Owen Sound never has interfered. I married two sisters, and had issue by my first wife. I then married my second wife. Father died after death of my first wife. I receive all the rents and profits. My brother-in-law never claimed or got anything. My wife's mother is living. I sometimes gave her something. The assessed value is \$700. I have received the rent for five

years. During all that time my brother-in-law has never claimed or received any share of rent. I hand over the whole to my mother-in-law. He knows I pay all to her. She gives most of it to my wife. She does as she likes. I would not question her as to it. He has been often down and knows all about this. The eldest child by first wife is eighteen. There is one other younger; both are alive and always live with me.

HAGARTY, C. J., held the vote bad.

JAMES CALDWELL'S VOTE.

James Caldwell: I live with my father on number six, second concession. I am thirty; a single man. I work the place. Father gets his share, *i.e.*, his living. Our bargain was I should work the place, give him his living, and I have the rest. This was made nine years ago. Father works at his trade in Brockville, coming home every Saturday night; he does not do any of the farming. Mother and sister and three brothers younger than me live at home. Two of the boys work at father's trade. I have had surplus profits. There was a debt on the farm when I got it; it is pretty nigh cleared off it; part of the profits went to pay it. I have been seven or eight years on the roll. Sometimes I pay the taxes; sometimes my father. He was to pay the taxes part of the time. No bargain made to any account. I occasionally worked a few days elsewhere; the place did not keep me in work all the time. Last fall I told collector that father was to pay taxes; I afterwards paid them myself. I dare say father will repay me.

Cross-examined: I could do as I liked with all that came from the place. I was not bound to pay off the debt; no time was fixed. I suppose father could turn me away.

HAGARTY, C. J.—I hold the vote good.

JOHN A. MOORE'S VOTE.

John A. Moore: I live on east half seventeen, in the fifth concession. I live with my father. I am twenty-

nine. He owns it. I made a bargain ; I was to live with him, keep him in his lifetime, and have all the produce for my use, and he was to leave it to me at death. This was made five years ago last winter. It has been acted upon since, and I have occupied on that agreement. Father takes no part ; he is near seventy. I am married, and live with wife and children in same house with him. No others of family there. The stock belongs some to him, some to me. My wife had some cows and sheep. I have raised a good many stock. Two or three of the cattle belong to father. The crops are mine ; I find the seed.

HAGARTY, C. J., held the vote good.

CHARLES SMITH'S VOTE.

David Smith : I live on thirteen. I own twenty-five acres. Voter lives with me. He has taken charge of all the business. No agreement between us.

Cross-examined : He has all the crops. I told him he could take all ; all I wanted was my living out of it. This was eight years ago. He owns all the stock ; I own nothing but the land. He can do as he likes. He is thirty ; unmarried. He has to keep me and my mother. I look to him for support whether crops or not. I let him do as he likes. He has raised all himself. I bother no more than a stranger. I have nothing to do with it.

HAGARTY, C. J.—I hold the vote good.

ROSS FRANCIS' VOTE.

Ross Francis : I live with my father on fifty acres. He owns it. My sister lives there, and a brother boards there. About four years ago I agreed to work place. I was to have all raised above what would support family. Father works when he likes. I am to have it at his death. I have had my clothes.

Cross-examined : I pay taxes. I manage all. If no crop or produce, I do not understand I am bound to support them.

John Francis: The arrangement was that he was to support me and my wife and a daughter; to have all that remained after supporting us to do as he pleased with, and have the place at my death. Crop or no crop, he was bound to support me.

Cross-examined: He was to support us off the place before he would get any of the surplus. The place has supported us. All I wanted was that we should be supported. It could not be seized for his debt, I think, until we were supported.

HAGARTY, C. J.—I hold the vote bad.

JOHN JOHNSTON'S VOTE.

John Johnston: I live on twenty-two and twenty-three. I lived with my father when assessment made. I am twenty-four, and left father last March. I was working on shares with father when assessment made. Two years ago last fall I went back to work with father. The bargain was that I was to have a share in what was raised, crop and hay. I and father to have all. No certain share mentioned. I was to have a share of what was raised. The team was mine. I expect he would have more than me. I had confidence in him. He was to give me what he thought was proper, or he thought he could bear. The family had to be supported. This bargain was made in fall of 1869. Last fall we had a good crop of grain; hay poor, five or six tons. My team and his ate the hay up. We bought hay this spring; I was to pay half of price. We raised wheat, oats, peas, etc.; wheat was ground. I got what flour was wanted, and what I want this year. I fed my team on my share of oats. I got peas to sow this spring in my present place—four bushels; could get more if I wanted them.

HAGARTY, C. J.—I hold the vote bad.

SAMUEL WILTSE'S VOTE.

Samuel Wiltse: I voted on part of twenty-one and twenty-two; I voted as occupant; my son owns it. I said if he went on, and paid for the place, all I wanted was a

house for myself and wife. We all live together. My son works it ; I do what little I can. He is paying for it.

Cross-examined : I first bought it in my own name from one Boyd. I expect he has got the deed, but don't know. I paid a little when I first bought it, nine years ago. I told Boyd to give him a deed, and he did so. I control it as much as he does.

Stephen Wiltse, his son : I got a deed of this from Boyd. The understanding was that father was to get his living off the place, also mother. He has occupied ever since. I am not always there. Father minds the place when I am away. I would have no right to turn him out.

Cross-examined : I bought it subject to a mortgage of \$800 ; \$500 has been paid on it. Father was to have his living off the place and I was to take the place. No agreement as to farming on shares. I do not think I could turn him out.

HAGARTY, C. J.—The son owns the fee, and is also occupier. I can see no interest in the father to support a vote. The verbal promise, even if there was a good consideration for the bargain, cannot I think avail ; I hold the vote bad.

A. D. DUNHAM'S VOTE.

Martin Hays : I own lot twenty-three, first concession. No writing made. I made verbal arrangement with William Dunham, eleven or twelve years ago. He pays \$30 per annum ; he pays every two months.

Cross-examined : Three or four years ago he asked me to give the receipts in his wife's name, Jane Dunham ; I did nothing more than hand receipts in wife's name. The voter is her son, and lately has paid me rent, and I still give receipt in wife's name. I never agreed to alter tenancy. They all live together. One payment was made by the son, at all events, this April or May.

Counsel for the petitioner proposed to give evidence that the father had agreed to the son working the place on shares.

HAGARTY, C. J.—Even if that were proved the vote would not be good. The son has no definite interest in

the land. At present I must hold that a tenant from year to year, whose tenancy was liable to be put an end to by a six months' notice, could not carve out a lesser interest in favor of a sub-tenant. He cannot create a vote by giving a share of the crop to his son. Vote held bad.

WILLIAM MCARTHUR'S VOTE.

Peter McLaren : Voter lives at the toll-gate number one. He is paid monthly for keeping it. I think he had some land rented for pasture. He gets six dollars per month and use of the house. The toll-house is on the road. The road belongs to the Lowell Road Company.

William McArthur, the voter : I was engaged at six dollars a month and the house. I keep the gate and collect tolls. I don't think they could turn me out during the month.

HAGARTY, C. J.—The man was only a servant of the company, and occupied the house only as toll collector. The company could turn him out at a moment's notice. Vote held bad.

ALANSON BACON'S VOTE.

Alanson Bacon : I was born in the United States ; so was my father. I took the oath of allegiance ten years ago. I produce it, dated the 9th July, 1861. I have been twenty-one or twenty-two years in Canada. I think I came in 1850, about midsummer.

HAGARTY, C. J.—Held that as the voter had not taken the necessary proceedings to obtain a certificate of naturalization from the Quarter Sessions, his vote was bad.

GEORGE HEALEY'S VOTE.

George Healey : I was born in the United States ; I understand I came to Canada forty-nine years ago, when a year old. My father lived at Potsdam, in the United States. He was born in the United States, as I understood. Father died twenty-one years ago. I never took the oath of allegiance. Grandfather came from Vermont, as I heard.

Cross-examined : My father took the oath of allegiance ; he had to do so before he got the deed of his land.

[The CHIEF JUSTICE.—That would be before he got his patent under 9th Geo. IV., c. 21.]

I suppose he took it in Prescott. The land he got was lot three in the seventh concession of Elizabethtown.

HAGARTY, C. J., held the vote bad.

SILAS WRIGHT'S VOTE.

Silas Wright : I understood from my parents I was born in Morristown, New York. I understood my father was born in Canada. I have lived here from infancy. I am 33 now.

HAGARTY, C. J., held the vote good.

At the close of the scrutiny, and at the request of the parties, a special case, setting forth the evidence on the charge of corrupt practices, was reserved for the opinion of the Court of Queen's Bench, counsel for the petitioner stating that except as to the selling and giving liquor on the polling day, as set out in the special case, they had no further evidence to offer. The special case (see *post* p. 139) was then settled, and the Election Court adjourned until the 9th January, 1872.

On the reassembling of the Court, the following consent was signed by Counsel and put in :

"The Court of Queen's Bench having given judgment in favor of the respondent in the special case stated for the opinion of the said Court, it is hereby consented and admitted that there is no further evidence to be offered by either party. And it is admitted that the respondent has a majority of votes on the scrutiny, and is entitled to the seat; and it is consented and agreed that the said respondent be declared duly elected; and that each party do pay his own costs of the said petition and proceedings taken thereon."

HAGARTY, C. J.—I therefore decide that the respondent has been duly elected, and that each party do pay his own costs (as agreed). And I shall report the same to the Speaker. (5 *Journal Legis. Assem.*, 1871-2, p. 48.)

BROCKVILLE.

BEFORE THE COURT OF QUEEN'S BENCH.

SAMUEL FLINT, *Petitioner*, v. WILLIAM FITZSIMMONS,
Respondent.

Controverted Election—Corrupt Practices—"Illegal and Prohibited Acts in Reference to Elections"—Selling and Giving Liquor—Carriage of Voters—Right to Reserve Questions of Law—32 Vic., cap. 21; 34 Vic., cap. 3.

Upon questions reserved by the Rota Judge under "The Controverted Elections Act of 1871," it appeared that H. and B. voted for respondent. H. kept a saloon, which was closed on the polling day; but upstairs, in his private residence, he gave beer and whiskey without charge to several of his friends, among whom were friends of both candidates. B., who had no license to sell liquor, sold it at a place near one of the polls to all persons indifferently. This was not done by H. or B. in the interest of either candidate, or to influence the election, B. acting simply for the purpose of gain; and the candidate did not know of or sanction their proceedings.

Held (though with some doubt as to B.), that neither H. nor B. had committed any corrupt practice within sec. 47 of 34 Vic., cap. 3, and therefore had not forfeited their votes; for they had not been guilty of bribery or undue influence, and their acts, if illegal and prohibited, were not done "in reference to" the election, which, under sec. 47 of 34 Vic., cap. 3, is requisite in order to avoid a vote.

The words "illegal and prohibited acts in reference to elections," used in sec. 3, mean such acts done in connection with, or to affect, or in reference to elections; not all acts which are illegal and prohibited under the election law.

The right to vote is not to be taken away or the vote forfeited by the act of the voter unless under a plain and express enactment, for it is a matter in which others besides the voter are interested.

One M., a carter, who voted for respondent, at the request of P., the respondent's agent, carried a voter five or six miles to the polling place, saying that he would do so without charge. Some days after the election, P., the agent, gave M. \$2, intending it as compensation for the conveyance of such voter to the poll, but M. thought it was in payment for work which he had done for P. as a carter. The candidate knew nothing of the matter.

Held, that there was properly no payment by P. to M. for any purpose, the money being given for one purpose and received for another; but that if there had been, it was made after P.'s agency had ceased, and there was no previous hiring or promise to pay, to which it could relate back.

If such payment had been established as a corrupt practice, it would have avoided P.'s vote, but not M.'s; and it would not have defeated the election, for it was not found to have been committed with the knowledge or consent of the candidate, but the contrary.

Quære, whether, under 34 Vic., cap. 3, sec. 20, the Rota Judge has power, before the close of the case, to reserve questions for the Court.

This was a case stated under the Controverted Elections Act of 1871, and reserved by the Judge trying the Election Petition (*ante* p. 129) as follows :

At the above Court, holden on the 26th, 27th, 28th, 29th, and 30th days of June, and on the 5th and 6th days of July, A.D., 1871, before me, the Honorable John Hawkins Hagarty, Chief Justice of the Court of Common Pleas, and one of the Judges on the rota for the trial of election petitions, the above named petitioner charged by his petition that the said respondent was not duly elected or returned, and that the said election was void, by reason that the said respondent and his agents, with a view of promoting the election of the said respondent, caused certain hotels, taverns, and shops, in which spirituous or fermented liquor or drinks were, at the time of the said election, ordinarily sold, to be opened and kept open on the day of polling votes at said election, in the wards and municipalities in which said polls were held, and caused spirituous and fermented liquors and drinks to be sold and given to divers persons within the limits of the said town of Brockville and the Township of Elizabethtown during the day of polling votes at the said election ; and hired certain horses and vehicles, and promised to pay for certain other horses and vehicles, and did pay for the same, to convey voters to or near or from the polls or polling places, or the neighborhood thereof, at the said election; and also by reason that divers persons who were guilty of the above practices voted at the said election for the said respondent. And the said petitioner by the said petition prayed the said seat, or a scrutiny, and that on such scrutiny the votes of the said persons who were guilty of the above corrupt practices should be struck off the poll.

Upon consideration of the evidence adduced on behalf of the petitioner as to the said charges, I find as follows :

1. As to George Houston. I find that George Houston, one of respondent's voters, was a saloon-keeper in Brockville ; that on the polling day his saloon was closed and

locked ; that up stairs, in a room in his private residence, he had beer and whiskey on a table ; that many of his friends, perhaps to the number of twenty to thirty, were that day, at different times, up in this room, and had liquor ; that no pay was taken or expected, nor any charge made for this ; he told any of his friends who were in the habit of coming to his saloon that they could have a drink upstairs ; that friends of both candidates were there on his invitation, and some not voters ; that he was under the impression that so giving this liquor was not violating the law ; that this was not done to influence any vote or voter by means of liquor ; that it was not done in the interest of either candidate, nor to produce any effect on the election or its result ; and that the respondent did not know of or sanction these proceedings.

2. As to Samuel Burns. I find that Samuel Burns had no license to sell liquors ; that he voted for respondent ; that he sold liquor to all persons that asked and paid for it on the polling day at a place near one of the polls in the township ; that he sold to persons, voters and others, without reference to their side or politics ; that this was not done in the interest of either candidate, or to affect the election or its result, but simply for the sake of gain ; and that the respondent did not know of or sanction these proceedings.

3. As to the charge of conveying voters to the poll. I find that William McKay, a carter in Brockville, and a voter for respondent, did, at the request of Thomas Price, an agent of respondent, carry an old man named Paul, a voter for respondent, a distance of five or six miles to the polling place ; that McKay was aware on the polling day that it was illegal to carry voters for hire, and had expressed his willingness to carry voluntarily and free of charge, being anxious to help the respondent ; that when Paul was spoken of, Price asked McKay could he, McKay, not carry him to the poll, and McKay said he would do so without charge, and that no hiring or payment was

then contemplated between them ; that some days after the election Price gave McKay \$2, considering that McKay was a poor man, and that he ought to give him something, and paid him the money intending it as a compensation for so carrying the voter ; that McKay did not receive it as such, but received it thinking it was in payment for some work he had done for Price as a carter in his ordinary business, and that there was an account between them for work in or about the amount of that sum ; that when the \$2 were paid, nothing was said about carrying the voter ; that the respondent knew nothing of this matter, and never authorized or sanctioned it.

The opinion of the Court of Queen's Bench is requested:

1st. What is the legal effect of the payment by Price, an agent for respondent, to McKay, as found by me ; whether it was a "corrupt practice," and, if so, did it avoid the vote of Price or McKay, or of both, as voters for respondent, or does it avoid the respondent's election?

2nd. Whether the giving or selling of liquors, as found by me, in such cases as Houston or Burns, avoided the votes of the said persons, or either of them ?

(Signed), JOHN H. HAGARTY, C.J., C.P.

The case was argued before the Court of Queen's Bench in Michaelmas Term, 1871. *Mr. Bethune* appeared for the petitioner. The question as to the votes of Houston and Burns, arises under the Ontario Act, 32 Vic., cap. 21, sec. 66, which requires all hotels, taverns, and shops in which liquors are ordinarily sold, to be closed during the polling day, and forbids any liquor to be sold or given to any person within the municipality during such period, under a penalty of \$100. The amending Act, 34 Vic., cap. 3, had two objects—to change the mode of trial, and more effectually to prevent corrupt practices at elections. In it, by sec. 3, a definition of corrupt practices is for the first time given, and it could hardly have been more comprehensive. It includes all "illegal and prohibited acts in reference to elections, or any of such offences, as defined by Act of the

Legislature." The acts of both of them were clearly prohibited and contrary to the statute, and were therefore corrupt practices, *Salford case* (1 O'M. & H., 134). Their votes are both bad, therefore, under sec. 47 of 34 Vic., which declares that any corrupt practice committed by an elector voting at an election shall avoid his vote. There is no clause expressly against "treating," as in the English Act, where it is provided for specially. Secs. 61 and 66 of our Act, 32 Vic., cap. 21, provide against it in effect, and are very stringent, making no exceptions even for medical purposes, though perhaps that might be implied. No question as to intention can arise under sec. 66, as under secs. 61, 63, 67, nor as to agency, as under sec. 71. As to Price's conduct, the 34 Vic., cap. 3, sec. 47, avoids his vote. His act was one of agency on behalf of the respondent. The intent of the agent is of no consequence; and the principal is affected by his act, although the agent was not employed for the purpose in which he violated the Act: *Coventry case* (1 O'M. & H., 107); *Taunton case* (*Ibid.* 184); *Blackburn case* (*Ibid.* 201). His act was an offence against sec. 71. The payment he made after the election was intended as compensation for carrying the voter, and although the agency had terminated, yet such payment, being connected with the precedent act of the agent, related back to the time when the service was performed, by analogy to the doctrine of ratification, *Limerick case* (1 O'M. & H., 261). The statute, under the Interpretation Act, 31 Vic., cap. 1, sec. 7, sub-sec. 39, should be liberally construed, so as best to ensure the attainment of its object. Votes are given on certain conditions, which must be observed. [WILSON, J.—Is that so? Is it not rather a right, of which these provisions are merely safeguards?] If a prohibited act be done by a candidate, it avoids the election; if it be done by a voter, it avoids his vote; if done by another, it subjects the person to a penalty.

Mr. J. H. Cameron, Q.C., contra. It is not pretended the election can be avoided excepting by reason of the pay-

ment by Price. As to the matters relating to Houston and Burns ; the acts prohibited by sec. 66, before referred to, are not necessarily connected with elections at all. Hotels, &c., are required to be closed during the polling day, and no liquor is to be sold or given that day under a penalty. The election may be over early in the day ; but at whatever hour the poll is closed, the hotels, etc., must be kept closed the whole of that day, from the earliest hour in the morning till midnight. The illegal or prohibited act, to be a "corrupt practice," and to avoid a vote, must be an illegal or prohibited act "in reference to elections," which these acts were not. The heading of "Prevention of Corrupt Practices at Elections," before sec. 67, cannot be held to govern all the sections down to sec. 74 ; for sec. 72 defines what shall be deemed to be "undue influence." There is no necessity to hold any act to be a *corrupt practice* unless it be expressly declared to be so, because all prohibited acts have some penalty or other attached to them. Houston and Burns may be subject to a penalty under sec. 66 ; but their votes are good, and cannot be disallowed. As to Price's case : Agency, if established at the time he employed the team, must be shown to have continued up to the time when he paid the money. There was no proof of hiring under 32 Vic., cap. 21, sec. 71 ; and the act of payment was a voluntary act of Price after the election was over, made not on account of the service rendered, but from charity, and not for the candidate, but for himself, and in his business. There was no agency existing then. A *payment* must be the act and intent of both ; such intent was absent from the minds of both, but if absent from the mind of one, that is sufficient to make it no payment. Price's act, if within sec. 71, merely destroys his vote, and subjects him to a penalty ; it does not defeat the election. Nothing will avoid the election unless, under the 46th sec. of 34 Vic., cap. 3, a corrupt practice be reported by the Judge to have been committed by or with the knowledge and consent of the candidate. An election committee has much

greater power in this respect under cap. 21, sec. 69. The argument may be thus shortly re-stated: 1. Price was not an agent at the time of the payment. 2. If he were, the payment was not with the knowledge and consent of the candidate. The election, therefore, cannot be avoided. 3. Price did not *hire* any team; his vote, therefore, cannot be struck off. Houston's and Burns' votes are good; at most their acts were prohibited, and they may be subject to a penalty. Where the Legislature has declared that a vote shall be lost for a particular cause, it does not intend that it shall be forfeited for any other cause.

Mr. Bethune, in reply. Selling or giving liquor does avoid the votes. As to what is undue influence, see *Huguenin v. Baseley* (14 Ves., 272; and in 2 White and Tudor, L. C., 504, 3rd ed.). It differs in its nature from an illegal or prohibited act. If the 47th section is not more extensive than the law was before, it is of no value. *Entertainment* it is not said shall avoid the election; but it does so because it is a prohibited act. The 43rd section of the Imperial Act is the one which has not been adopted in our Act. As to Price's act, it avoids the whole election; but at any rate his vote is avoided by the 71st section. Most of the payments in such cases are made after the election. He referred to the cases already decided under this act: The *Glengarry case*, before Hagarty, C.J. (*ante*, p. 8); *North York case*, before Galt, J. (*ante*, p. 62); *North Simcoe case*, before Strong, V.C. (*ante*, p. 50); and the *South Grey case*, before Mowat, V.C. (*ante*, p. 52).

WILSON, J.—The particular cases referred to us by the learned Chief Justice of the Common Pleas, are—1stly, that of George Houston. He voted for respondent; was a saloon-keeper in Brockville. On the polling day his saloon was closed and locked. Upstairs, in a room in his private residence, he had beer and whiskey on a table. He gave it to those who came without pay or expectation of it. It was not done in the interest of either candidate,

nor to influence any vote or voter, nor to produce any effect on the election ; nor did the respondent know of or sanction it.

2ndly. That of Samuel Burns. He had no license to sell liquors. He voted for respondent. He sold liquor on the polling day, near a poll in one of the townships, and charged for it. He sold it to persons without reference to their side or politics. In other respects, his case is similar to that of Houston.

These two cases may therefore be considered together.

The part of the 32 Vic., cap. 21, sec. 66, which applies to these cases, is the latter part of it : "And no spirituous or fermented liquors or drinks shall be sold or given to any person within the limits of such municipality during the said period" (*i.e.* during the day appointed for polling), "under a penalty of \$100 in every such case."

And it was argued that because they had infringed the provisions of this section, the one by *giving* and the other by *selling* liquor, they had not only incurred a penalty, but had forfeited their votes; that such giving and selling were prohibited acts, and were within the provisions as to corrupt practices.

The deprivation of the right to vote, or the forfeiture of a vote already given, is not to be imposed as a penalty upon any one, unless under the express enactment of the Legislature. There are other persons interested in and affected by that vote beside the voter. The candidate for whom he has voted is interested in it, and so are the whole body of electors who have voted for the same candidate. One vote has and may again influence or change the result of an election, and that is not to be brought about by merely inferential or argumentative legislation, or as to what the Legislature must have intended. There must be a plain enactment declaring that the vote shall be rejected if tendered, or shall be struck off if given, to justify the disallowance of it, and, as a consequence, to double the penalty on the voter, and so seriously to affect the rights, privileges and interests of others dependent on the vote.

What, then, has the statute said on this point?

32 Vic., cap. 21, sec. 70, declares, that on its being proved before any election committee that any elector voting was *bribed*, his vote shall be null and void.

What *bribery* is under that Act, is explained by sections 67 and 68; the acts stated are not acts of bribery; the first of these sections has the caption of "Prevention of Corrupt Practices at Elections."

The 34 Vic., cap. 3, sec. 3, declares that "'corrupt practices' or 'corrupt practice' shall mean bribery and undue influence, and illegal and prohibited acts in reference to elections, or any of such offences, as defined by Act of the Legislature."

The 47th section enacts that, "If on the trial of any election petition, it is proved that any corrupt practice has been committed by any elector voting at the election, his vote shall be null and void." It is under this section that the votes of Houston and Burns are said to be void. It is said they have each been guilty of a *corrupt practice*, not by reason of having committed bribery, but by reason of their having exercised undue influence, or from their having done illegal and prohibited acts, in consequence of the one having given liquor and the other having sold it on the polling day.

It is quite plain that undue influence and illegal and prohibited acts in reference to elections must be corrupt practices, when the Legislature has declared they shall be so.

Firstly. Were the giving and selling of liquor acts of *undue influence*? The meaning of that term is explained and defined by the 32 Vic., cap. 21, sec. 72, and it is quite manifest that the acts charged against Houston and Burns are not within that category.

Secondly. Were the giving and selling of liquor, as before stated, "illegal and prohibited acts in reference to elections?"

It is necessary to settle what the meaning is of "illegal and prohibited acts in relation to elections." Does the

expression mean generally all illegal and prohibited acts *under the election law*; or does it mean illegal and prohibited acts when and because they are done in connection with, or to affect, or in reference to, elections?

In the one case, giving and selling liquor, however disconnected with the election they may be, will, if done within the municipality during the election, be illegal and prohibited acts, and as a consequence will be corrupt practices.

In the other case, such acts will not constitute corrupt practices, unless they are shown to have been done to influence or to affect the election, or in some way to have been done in connection with it.

The section in which the illegal and prohibited acts in relation to elections are named, contains the election law offences of bribery and undue influence, both of which acts have and must necessarily have a direct and inseparable relation to the actual electoral contest, and to the proceedings anterior to it. Bribery and undue influence in general are not prohibited, but bribery and undue influence in relation to elections only. Why then should any greater effect be given to the other words of the section, "and all illegal and prohibited acts," and more especially as the words "in reference to elections," have been superadded?

It will be found also that the offences of entertaining electors, furnishing colors or badges, and carrying or wearing them, relate in like manner to the elections.

The election law morality is very different from what morality is under the general law. The election law does not prohibit stealing, but it does prohibit the wearing of a party badge within the electoral division on the day of election or polling, or within eight days before such day, or during the continuance of the election. The thief may have on his person at the time he votes the watch of the returning officer, or of the candidate whom he supports, but he is an innocent man by the election law, and a good voter; while the elector who has worn a party badge but

for five minutes anywhere in the electoral division, miles away from the polling place, within eight days before the election, is a criminal by the election law, and an illegal voter, although in fact a very honest respectable man. The vote of the one, though not his person, will stand the strictest scrutiny. The vote of the other must fail. The thief has been guilty of no corrupt practice, but the wearer of the badge has. This cannot then be a law to *be enforced, unless the enactment* be a plain and positive one.

I do not think we should call every illegal and prohibited act by this special statute, which is intended to operate for a limited time, on a peculiar occasion, and for a particular purpose, a *corrupt practice*, against the provisions of that law, unless the act be shown to have been done in some way or other with a view to the election, or to bear upon it, or as connected with it, or in relation to it, or as calculated or intended so to operate. If any other construction be given to the statute, it will be attended with very oppressive and needless consequences of punishment and forfeiture.

A general state of drinking and drunkenness at the time of the election among the electors and inhabitants of the locality, resulting from the dispensation of liquor, might well be deemed to be a dispensation of such liquor in relation to the election, although it were made without any special reference to the election. The state of mind, the influence and general condition of things it would induce, would tend naturally to disorder the proceedings, and to cause an untrue and improper expression to be given of the sober popular will. That was the case in the *Tamworth case* (1 O'M. & H., 85).

But the giving or selling of liquor in consequence of a horse trade, or in payment of an old bet, or from mere friendship, or to test the quality of it as a medicine, or to be shipped abroad, or for any other purpose not "in reference to the election," would not, in my opinion, be an illegal or prohibited act, so as to be a corrupt practice within the meaning of the statute. Nor do I think the

giving or selling of liquor, though on the polling day, but after the poll was closed, and miles away from where the poll was held, would necessarily be an illegal and prohibited act in reference to the election, so as to amount to a corrupt practice (*Coventry Election Petition*, 20 L. T. N. S., 405).

The 61st section of the 32 Vic., cap. 21, permits the candidate and others acting for him, even with intent to promote his election, to furnish entertainment to the electors, so long as it is done at the usual place of residence of the candidate, or of those who furnish it for him. Such *entertainment*, it would be difficult to say, should not include even a single glass of wine.

The statutes contain many illegal and prohibitory acts besides the giving and selling of liquor on the day of the poll, and to hold them to be corrupt practices, although *not* done in reference to the election, would be hurtful to all parties, and utterly unreasonable.

By 32 Vic., cap. 21, sec. 57, sub-sec. 3, any person disturbing the peace and good order may be imprisoned by the returning officer or his deputy, for a time not later than the final closing of the poll. Is the vote of that person to be rejected, or afterwards struck off, although his act had no reference to the election, but was occasioned by some great wrong done or provocation given to him?

By sec. 60 every person convicted of a battery committed during any part of the election or polling day, within two miles of the place of election or poll, is to forfeit \$50. Is that person also to forfeit his vote, although the battery had nothing whatever to do with the election, or happened after the election was over?

It appears to me these cases plainly answer themselves, and enable the matter with respect to the giving and selling of liquor to be as easily answered.

The penalties are already quite severe enough, without increasing them against the voter, and extending them to the candidate, and to the other electors of the constituency, who suffer as well as the voter by the disallowance of his

vote, unless we are obliged by the most explicit enactment of the law to do so.

In my opinion, on the case stated with respect to these persons, we are not required, and would not be justified, in avoiding their votes.

The facts show that the giving and selling of the liquor were not acts done in reference to the election.

On this point, I may however say that I am more satisfied with my conclusion as to the act of Houston, as to the giving of the liquor, than I am with respect to Burns, who sold the liquor in a place and under circumstances giving rise to some degree of suspicion.

The other part of the case relates to the act of Price.

His conduct is complained of on the ground of its having been an illegal and prohibited act in reference to the election, contrary to the 32 Vic., cap. 21, sec. 71. That section declares, so far as is applicable here, "that the hiring or promising to pay, or paying for, any horse," etc., "by any candidate, or by any person on his behalf," to convey voters at any election, shall be an illegal act, and the person offending shall incur a penalty of \$100; and any elector who shall hire any horse, etc., for any candidate, or for any agent of a candidate, for the purpose of conveying electors, etc., "shall *ipso facto* be disqualified from voting at such election, and for every such offence shall incur a penalty of \$100."

The section, it will be observed, is in two parts. The first part affects the candidate and his agent, by subjecting them to a penalty. The second part affects the electors, and besides subjecting them to a penalty, it disqualifies them from voting.

Price was an agent of the candidate, and so, as to the penalty, is within the operation of the first branch; but he was also an elector, and so he is within the operation of the second branch, as to the loss of his right to vote.

The case finds there was no hiring of McKay to carry Paul, the voter. McKay carried Paul at Price's request, but he carried him "voluntarily and free of charge." Some

days after the election, Price, as compensation to McKay, gave him \$2 for carrying the voter. McKay did not receive it as compensation, but in payment of work he had done for Price in his ordinary business as a carter.

I do not see how McKay can be within the operation of the section at all. The hiring, or promising to pay, or paying for any horse, etc., applies to the candidate, and to any person on his behalf. That will extend to Price if he hired, or promised to pay, or paid McKay for any horse, etc.; but it cannot extend to McKay, as he was at most the person hired, promised to be paid, or paid. Nor does the second branch apply to him, for that extends to the electors who hire others, and not to those who are hired.

The case has to be considered, then, with regard to Price alone.

At the time he voted—for I assume he did vote, as I gather so from the first question put in the case, and from the argument of counsel, though the case itself does not say he did—he was under no disqualification; for he had not hired, promised to pay, or paid McKay, and there was no agreement or understanding to do so, but the contrary; the service was to be, as in fact it was at the time performed by McKay, free of charge.

In my opinion, the agency of Price terminated with the election—the occasion and the purpose for which he was employed. His subsequent payment was an unauthorized act as to his principal. It can relate back to nothing, for there was no hiring or promise to which it could attach. But as a fact it was not a payment; that must be the act and by the assent of both parties. When Price gave the money for one purpose, and McKay received it on another account and in respect of a different transaction, that was not a payment for the purpose that Price intended it for, more than it was a payment on the account for which McKay received it. It was properly not a payment to or for either one purpose or the other (*Thomas v. Cross*, 7 Ex. 728).

In no view of the case, as the learned Chief Justice has found that the respondent knew nothing of the matter between Price and McKay, and never authorized or sanctioned it, could it be possible to avoid the election, even if Price's act had been determined to be a corrupt practice. For under the 46th section of the 34 Vic., cap. 3, the learned Chief Justice, to affect the return, would have to find that "the corrupt practice had been committed by or with the knowledge and consent of the candidate," whereas he has distinctly negatived that fact.

I am not quite satisfied, as I stated during the argument, however convenient the practice may be, and however desirable it is that the law should be so, that the Rota Judge has power, until he is in a position to grant his certificate, under the 34 Vic., cap. 3, sec. 20—that is, until the close of the case—to reserve a question for the Court.

Such question is to be reserved "in like manner as questions are usually reserved by a Judge, on a trial at *Nisi Prius*," and no Judge at *Nisi Prius* can stop a case in the middle, and adjourn it until he has some intermediate difficulty cleared out of his way by a reference to the Court. If there be any doubt in this respect, the Act should be amended.

Assuming that the case is regularly before us, I shall answer the questions submitted as follows:

1. That there was no *payment* made by Price to McKay. If it were a payment, it was made by Price at a time when he was not an agent for the respondent, and with respect to a matter to which it could have no proper relation, for there was no antecedent hiring or promise to pay. The matter was, therefore, not a corrupt practice.

If it had been a corrupt practice, it would have avoided Price's vote but not McKay's vote, for he was the person hired, if there had been a hiring, and such a person is not deprived of his vote.

This act, if it had been established to have been a corrupt practice, would not have defeated the election, because it has not been found to have been "committed by or with

the knowledge and consent of the candidate ;” on the contrary, the very opposite fact has been found for the candidate.

2. That the giving of liquor, as found by the case, by Houston, does not avoid his vote. I have more doubt as to the selling of liquor by Burns, but I am not so free from doubt as to find against him, on the case submitted.

I am of opinion, therefore, that neither of their votes has been avoided.

MORRISON, J., concurred.

(32 Q.B., 132).

MONCK.

BEFORE MR. JUSTICE GALT.

DUNNVILLE, 23rd and 24th August, 1871, and 8th January, 1872.

JOHN W. COLLIAR *et al*, *Petitioners*, v. LACHLIN MCCALLUM,
Respondent.

*Bribery—Special Case—Irregular Voters’ List—Election not Affected—
Amendment of Petition—Costs.*

An elector when asked to vote for respondent said that it would be a day lost if he went to vote, which would cost him \$1. To which the canvasser replied, “Come out, and your \$1 will be all right.”

Held, not sufficient to establish a charge of bribery.

The Court of Queen’s Bench on a special case (32 Q. B., 147),

Held, 1. That the proper list of voters to be used at an election is “the last list of voters made, certified, and delivered to the Clerk of the Peace at least one month before the date of the writ to hold such election.”

2. That an irregular voters’ list had been used in one of the townships in the Electoral Division ; but that the result of the election had not been affected thereby, and that the election was not avoided.

3. That the Judge trying an election petition has power to amend the petition by allowing the insertion of any objection to the voters’ list used at the election.

The petitioners were ordered to pay the costs of the respondent up to the meeting of the Election Court, and the costs of the special case ; but as to the costs of the trial, each party was ordered to pay his own costs.

The petition contained the usual charges as to corrupt practices, and claimed the seat on a scrutiny of votes for the defeated candidate, James D. Edgar.

The vote was : For respondent, 931 ; for James D. Edgar, 926 ; majority for the respondent, 5.

Mr. Bethune, for petitioners.

Dr. McMichael, for respondent.

The following evidence was given as to corrupt practices.

Adam V. Moot : I am a voter in this division. I voted for Mr. Edgar. David Winslow came to my house before the polling ; he asked me if I was coming out to vote. I said I did not know it would be worth my while, because I was a hired man. I said I would consider it a day lost if I went out to vote, which would cost me \$1. He said : Come out, and your \$1 will be all right. He was supporting McCallum.

Mr. JUSTICE GALT held that the charge of bribery was not sustained.

Evidence was then given to show that in one of the townships in the electoral division the list of voters was made up from the Assessment Roll of 1870, and was sworn to on the 13th August, 1870, but that it was not delivered to the Clerk of the Peace until the 17th March, 1871, during the election in question. It was also proved that the Voters' List of 1869 had been delivered to the Clerk of the Peace on the 19th August of that year ; and that there were 41 voters on the Voters' List of 1869 who were not on that of 1870. The writ to hold the election was dated the 25th February, 1871, and the election was held on the 14th and 21st March of the same year.

Mr. JUSTICE GALT thereupon reserved a special case for the opinion of the Court of Queen's Bench, setting out the above facts, and also submitting whether the Judge presiding at the trial had power to amend the petition.

The Court of Queen's Bench (32 Q. B., 147) held that the Voters' List of 1869 should have been used at the election, it having been the one filed with the Clerk of the Peace "at least one month before the date of the writ to hold such election," pursuant to 32 Vic., c. 21, s. 7, subs.

10. But that as it was not shown that the vote of any one of the 41 entitled to vote by the list of 1869 had been rejected, nor that the use of the Voters' List for 1870, instead of that for 1869, had in any way affected the result of the election, the election was not avoided. The Court also held that the Judge trying the election petition had power to amend the petition by allowing the insertion of an objection to the voters' list used at the election.

On the reassembling of the Election Court (January 8, 1872), counsel for the petitioners stated that in consequence of the decision of the Court of Queen's Bench, it was their intention to abandon the scrutiny.

Mr. JUSTICE GALT thereupon declared the respondent duly elected, and made the following order as to costs: The petitioners to pay the costs of the petition up to the meeting of the Election Court at Dunnville. Each party to pay their own costs of the trial before the Election Court. Petitioners to pay any witness fees actually paid to witnesses before the 5th January, 1872, except the witness fees of witnesses examined at the hearing at Dunnville. Costs of the special case to be paid by petitioners.

(5 *Journal Legis. Assem.*, 1871-2, p. 49).

WEST YORK.

BEFORE CHIEF JUSTICE HAGARTY.

TORONTO, 5th and 6th September, 1871, and 8th March, 1872.

THOMAS GRAHAME, *Petitioner*, v. PETER PATTERSON,
Respondent.

Notice of Disqualification of Candidate—Postmaster—Office or Employment in the Service of the Dominion of Canada—31 Vic., c. 10, and 32 Vic., c. 4, s. 1—Special Case—Consent to Dismissal of Petition.

The respondent, a postmaster in the service of the Dominion of Canada, became a candidate at an election held on the 14th and 21st March, 1871, and was elected. On the 11th March he resigned his office of postmaster, which was accepted by the Postmaster General on the 13th

March. His accounts with the Post Office Department were closed and his successor appointed after the election. Evidence of the notoriety of the alleged disqualification of the respondent was given, which was that such alleged disqualification was a matter of talk, and that all the people at the meeting for the nomination of candidates were supposed to be aware of the supposed difficulty as to such disqualification.

Held, that even if the respondent was disqualified for election, the Judge could not on such evidence declare that the electors voting for the respondent had voted perversely, and had therefore thrown away their votes, so as to entitle the petitioner to claim the seat.

Where a class of persons affected by the decision of a case is numerous, and the question involved is one of general importance, the Judge may reserve a special case for the opinion of the Court of Queen's Bench ; and the Judge here decided to take that course.

The petitioner, after such special case had been reserved, appeared before the Judge trying the election petition, and consented to the abandonment of the special case and the dismissal of the petition with costs, and it was so ordered.

The petition alleged that at the time of the election (14th and 21st March, 1871) the respondent was disqualified to be elected a member of the Legislative Assembly by reason of his holding the office of postmaster at Patterson, West York, an office in the service of the Dominion of Canada, at the nomination of the Crown, to which a salary or fee, etc., was attached ; and that such was a disqualifying office under the Act to secure the Independence of the Legislative Assembly, 32 Vic. c. 4, s. 1, which enacted that, "no person accepting or holding any office, commission or employment . . . in the service of the Dominion of Canada, at the nomination of the Crown, to which any salary or any fee, allowance, or employment in lieu of any salary from the Crown, is attached, shall be eligible as a member of the Legislative Assembly, nor shall he sit or vote in the same during the time he holds such office, occupation, or employment." The petition claimed the seat for the petitioner on the ground that public notice of the respondent's disqualification was given to the electors.

Dr. McMichael, for petitioner.

Mr. R. A. Harrison, Q.C., *Mr. J. K. Kerr*, and *Mr. Bull*, for respondent.

It was admitted that the respondent was postmaster at the Village of Patterson, West York, up to the 11th March,

1871, that on that day he sent a telegram and letter to the Postmaster-General, resigning his office of postmaster, which was accepted by telegram on the 13th March, and by letter on the 18th March, 1871.

It was further admitted that the nomination of candidates took place on the 14th March and the polling on the 21st March; that the petitioner and respondent were the only candidates; and that the result of the polling was: For petitioner, 671; for respondent, 865; majority for respondent, 94. It was also admitted that the office of postmaster was one of emolument under the Postmaster-General under the Act of Canada, 31 Vic., c. 10.

The evidence of the public notoriety of the respondent's disqualification was as follows:

Robert Johnston: I was at the nomination; perhaps some three or four hundred persons were present. I showed the respondent the Post Office Regulations just before the nominations. The objection was discussed as to respondent's qualification; and after a telegram to Toronto, an answer came from Toronto stating that the respondent was all right. The respondent and his friends then consulted as to whether another candidate should be named; ultimately he and his friends decided it was all right. This was after respondent and others had been proposed and seconded. Then all others retired in favor of respondent. After receipt of the telegram it was a matter of talk, and I dare say all the people in the hall were aware of this supposed difficulty and deliberation. The nomination took place on a balcony in front of the hall. The body of the electors were in the open air in front of the hall.

Counsel for the petitioner stated that he had no stronger evidence to support the petitioner's claims to the seat.

The CHIEF JUSTICE held on this evidence that the petitioner could not claim the seat if the respondent should be found to be disqualified (a).

(a) See *Essex case*, 9 U. C. Law Jour., 247.

After the argument of counsel on the question of the disqualification of the respondent,

HAGARTY, C. J., said: I do not feel much difficulty in satisfying my own judgment on the question before me; but as the class of persons affected by the decision is numerous, the question one of general importance, and there has apparently been no express decision since the change in the mode of trying election petitions, I think it better to reserve the law of the case for the Court of Queen's Bench. If I decide, my judgment is without appeal, and it is possible another Judge, similarly situated, might view the case differently. I think it better to have the law settled by the highest authority. I shall therefore, under the 20th section of the Act, find the facts in evidence before me, and reserve for the determination of the Court of Queen's Bench two questions:

1. Is the office of postmaster (not being in or for a city or town) an office occasioning a disqualification for election?
2. Was the respondent on the day of nomination (14th March, 1871) a person holding such office?

Subsequently it was agreed between the parties that the special case should be abandoned, and that the respondent should be declared duly elected and returned, and that petitioner should pay the respondent's costs.

The CHIEF JUSTICE thereupon determined that the respondent was duly elected, and that the petition should be dismissed with costs.

(6 *Journal Legis. Assem.*, 1873, p. 3).

PRINCE EDWARD, (2).

BEFORE MR. JUSTICE MORRISON.

PICTON, 27th August, 1872.

JOSHUA B. DORLAND *et al*, *Petitioners*, v. JAMES SIMEON
McCUAIG, *Respondent*.

*List of Voters to be used at Election—Scrutiny according to the Proper List
—Seat awarded to the unsuccessful Candidate at Election.*

Held, following the *Monck case* (32 Q. B., 147, *ante*, p. 154), that the list of voters to be used at an election must be the list made, certified and delivered to the Clerk of the Peace at least one month before the date of the writ to hold such election.

The list of voters used at the election in the Township of Hillier was not filed until the 28th November, 1871, and the writ of election was dated 9th December, 1871.

Held, that the list of voters of 1871 should not have been used; and the Court having compared the Voters' List of 1870 with the poll books used at the election in the Township of Hillier, found that 35 persons had voted for the respondent whose names were not on the list of 1870; and the names of such persons having been struck off the poll, the respondent was found to be in a minority; and the seat was thereupon awarded to the other candidate, he having obtained on the scrutiny a majority of the votes.

An election having taken place on the avoidance of the former election (*ante*, p. 45), the respondent was declared elected. This petition was thereupon filed, praying for a scrutiny of votes, and claiming the seat for the defeated candidate, Gideon Striker.

Mr. J. K. Kerr and Mr. Allison, for petitioners.

Mr. Low, Q.C., for respondent.

The poll books were produced, from which it appeared that the total vote was as follows: For respondent, 1660; for Mr. Striker, 1644; majority for respondent, 16. The writ of election was dated the 9th December, 1871, and the election was held on the 22nd and 29th December, 1871.

Evidence was then given that the voters' list used at the election in the Township of Hillier had not been sworn to by the clerk until the 28th November, 1871, and had not been "made, certified and delivered to the Clerk

of the Peace at least one month before the date of the writ to hold such election," as required by 32 Vic., c. 21, s. 7, subs. 10. The voters' list for the same township was then produced and compared with the poll books used at the election, when it was found that 35 persons had voted for the respondent whose names did not appear on the Voters' List for 1870.

The charges and counter charges of bribery, &c., were withdrawn on both sides. After a short adjournment the Court was reopened, when the following judgment was delivered:

MORRISON, J. [after referring to the charges in the petition, and that the petitioners claimed that Mr. Striker had a majority of the legal votes] said: The poll books show that in the Township of Hillier there were 201 votes recorded for Mr. McCuaig, and 168 for Mr. Striker; that the voters' lists used by the Deputy Returning Officers in that township were taken from a list of voters for 1871, which the acting township clerk of Hillier had not certified under oath or affirmation until the 28th November, 1871, twelve days previous to the 9th December, 1871, the date of the writ of election. Under the 5th sec., and the 10th subs. of sec. 7, of 32 Vic., c. 21, no persons other than those whose names are entered and appear on the last list of voters made, certified and delivered to the Clerk of the Peace at least one month before the date of the writ of election, shall be admitted to vote; and by the 2nd subs. of the 7th sec. the clerk shall certify, by oath or affirmation, to the correctness of the list so by him made out, and deliver a duplicate original thereof certified by oath or affirmation to the Clerk of the Peace. Now, here it appeared clear that the township clerk did not certify, by oath or affirmation, the roll for 1871 until the 28th November, 1871, *i. e.*, until twelve days before the date of the writ, and it was contended that the scrutiny could only proceed on the roll for 1870, being the then last duly certified roll.

The question was deliberately considered by the Court of Queen's Bench in the case of the *Monck Election* (32 Q. B., 147, *ante* p. 154), and the learned Chief Justice of Ontario then held, and I concurred with him in opinion, that in order to qualify a voter, the statute requires that his name must appear on the last certified list delivered to the Clerk of the Peace one month before the date of the writ of election. Following that decision, I am of opinion that the roll of 1870 is the one to show the names of the duly qualified voters entitled to vote at the election now in question. And as the evidence shows, of the votes recorded for Mr. McCuaig in the Township of Hillier 35 were given by persons whose names were not on the roll of 1870, and consequently not entitled to vote at the election, and being now struck off, Mr. McCuaig is placed in a minority of 19; and that gentleman and his counsel both intimating that they could not further proceed with the scrutiny so as to place Mr. Striker in a minority, and the other charges alleged in the petition, as well as the recriminatory case on the part of the respondent, being on both sides abandoned, I have only to say that the petitioners have proved Mr. Striker to be in a majority; and I therefore find that Gideon Striker has a majority of votes, and that he was duly elected for the County of Prince Edward, and that the respondent is unseated, and that Mr. Striker ought to have been and should now be returned.

(6 *Journal Legis. Assem.*, 1873, p. 4).

SOUTH GRENVILLE.

BEFORE MR. VICE-CHANCELLOR MOWAT.

PRESCOTT, 3rd to 14th September, 1872.

WILLIAM ELLIS, *Petitioner*, v. CHRISTOPHER FINLAY
FRASER, *Respondent*.*Scrutiny—Qualification of Voters—Right of Partners, Joint Owners, Trustees, and Vendors to Vote—Mistake in Lot—Assessed Value—Evidence—Objection to Votes.*

Where a son was assessed at \$700 for a farm in which he and his father were partners, in the proportion of three-fourths of the profits to the father and one-fourth to the son, and the objection to the voter was non-ownership,

Held, that the partnership was established by the evidence, and in view of the objection taken, the vote was sustained.—*Haller Smales' vote.*

Where two partners in business occupied premises the freehold of which was vested in one of them, and the assessment of the premises was sufficient to give a qualification to each, both partners were held qualified to vote.—*Thomas Fitzgerald's vote.*

Where a father, the owner of a lot, told his son that he might have the lot, and advised him to get a deed drawn, and the lot had been assessed to the son for 3 or 4 years, and was rented to a tenant by the father with the assent of the son, who paid to the father his wages but the father collected the rent,

Held, that as there was nothing but a voluntary gift from the father to the son, without possession, the son's vote was bad.—*James Lundy's vote.*

Where a father had made a will of a lot to his son who was assessed for it, and the son took the crops except what was used by the father, who resided on the lot with his wife, the son residing and working on another farm,

Held, that the son had not such a beneficial interest in the lot as would entitle him to vote.—*William Mullin's vote.*

Where A., who resided out of the riding, had made a contract in writing to sell to B. the property assessed to him as owner, but had not at the time of the election executed the deed, B. having been in possession of the property for several years under agreements with A.,

Held, that A. was a mere trustee for the purchaser, and had therefore no right to vote.—*James Holden's vote.*

Where a vendor before the revision of the Assessment Roll had conveyed and given possession of the property to a purchaser, and such purchaser had afterwards given him a license to occupy a small portion of the property, such vendor was held not entitled to vote.—*Daniel Noblin's vote.*

Where the owner of mortgaged property died intestate, leaving a widow and sons and daughters, and the property was sold under the mortgage, and the deed made to the widow, but three of the sons furnished some of the purchase money, and all remained in possession, and the eldest son was assessed as occupant,

Held, that as the eldest son did not show that the property was purchased for him, and the presumption from the evidence being that it was bought for the mother, such eldest son had no right to vote.—*John Morrow's vote.*

An objection that the persons objected to were not owners, tenants, or occupants within s. 5, excluded an objection as to the value of the assessed property.—*Ibid.*

A trustee under a will, having no present beneficial interest in the real property assessed to him, was held not entitled to vote.—*William H. Jones' vote.*

Where a voter was assessed for property which he sold on the 27th February, 1871, before the revision of the Assessment Roll, and was not assessed for other property of which he was in possession as owner or tenant, he was held not entitled to vote.—*Thomas Place's vote.*

The mistake of the number of the lot does not come under the same rule as the mistake of a name, as the latter is provided for in the statute and the voter's oath.—*Ibid.*

Where one of two joint owners was assessed for property at \$200, neither of such joint owners was entitled to vote.—*Robert Stewart's vote.*

Parol evidence is inadmissible on a scrutiny to alter the value assessed against property in the Assessment Roll.—*Ibid.*

A vacancy having occurred in this constituency by the death of the member elected at the general election held in March, 1871 (see *Journal Legis. Assembly*, 1871-2, p. 247), a new election was held in March, 1872, when the respondent was declared duly elected.

A petition was presented on the 25th April, 1872, by the above named petitioner, who was a candidate at the election, alleging corrupt practices against the respondent and his agents, and claiming the seat on a scrutiny.

Mr. R. A. Harrison, Q.C. for the petitioner.

Mr. A. N. Richards, Q. C., *Mr. Maclellan*, and the *Respondent* in person, for the respondent.

The Respondent filed recriminatory charges of corrupt practices against the petitioner and his agents. After evidence on the charges against each of the parties had been given,

The VICE-CHANCELLOR held the evidence not sufficient.

The scrutiny of votes was then proceeded with, and the following cases were decided.

HALLER SMALES' VOTE.

Elijah Smales: I own 16 in 1st concession. My son voted on the east half of the lot, and I on the other half. My son and I live on the place together. We are in partnership. I have also a minor son living with me.

I have also two daughters living at home. Haller is not married; he is about 30. I never made to him a deed of half. My son has been a partner with me in all my business ever since he came of age. We have made sometimes \$500 or \$600 a year, and sometimes much more. He gets one-fourth of the profits and I get three-fourths. He works on the farm; he does farm work. I work too; both of us manage. I own other lands. Our partnership is not in writing; we don't need a writing. We keep books. We buy and sell land; we have between two and three hundred acres now, and have had much more. When my minor son comes of age I will probably give him one-fourth if he chooses to be a partner.

Cross-examined : There was a bargain when he came of age to the effect mentioned. We divide the proceeds of sales frequently. This has been so from the first.

The Assessment Roll was put in, which showed that the voter was assessed for the E. $\frac{1}{2}$, \$700, and the father for the W. $\frac{1}{2}$, \$1,200.

Mr. Harrison contended that the evidence showed that the son was only interested to the extent of one-fourth in the \$700 lot, not sufficient to give him a vote.

Mr. Fraser cited Owen Baker's case, *Stormont case* (*ante*, p. 31), to show that the objection could not be taken for deficient assessment where the objection of which notice was given was non-ownership, etc.

The VICE-CHANCELLOR held the vote good. The evidence of the father, which was not impeached, showed that the father and son were partners in all the property, and the son undoubtedly ought to have the right to vote. Under these circumstances, and in view of the objection taken in Owen Baker's case, he allowed the vote.

THOMAS FITZGERALD'S VOTE.

Thomas Fitzgerald: I voted on a property on Main Street in this town. John Duffy owned the lot; when I voted he was living on it. The shoemaking business is carried

on in the house. I lived there when I voted. I am not a married man ; Duffy is. My father is not alive. I am an adopted son of John Duffy, and have lived with him since my childhood. He has children of his own. Four and a half years ago he agreed to give me a share—one-third of the profits in the business. I had worked with him fifteen years before that. I was not to pay for my board. He was to give me my board and one-third of the profits of the business. That agreement has continued ever since. I never had any other agreement with him. I don't recollect the date. I had a settlement with him last year. That was the first settlement I had with him. It was in the spring. I had no settlement with him before I voted. I did not ask a settlement, because I did not want it. Any money I wanted I got from him. At the settlement I got \$57 as my share of the profits for six months. That was the last six months. We had no settlement for the prior period. I did receive the \$57.

Cross-examined : I had been intending to leave when the agreement was made four and a half years ago. I remained on the faith of the agreement. I was not very strict with the old man. He and I alone worked on the premises.

Re-examined : I was at the Court of Revision. They said I had a bad vote. I was asked to swear. I don't recollect whether I refused to swear whether I was a partner of Duffy's.

John Duffy : I am owner of the property Fitzgerald spoke of. I think the number is 7. I occupied the whole until about nine months ago. I rented part then to Mr. Robinson, who pays his rent to me. Fitzgerald is still working with me. Four or five years ago he had a notion of going west, and I said if he would remain with me I would give him one-third of the profits ; one-third goes for wood, taxes and other expenses of the house, and I have the remaining one-third for myself. My other boys have all left me, and I could not get on without him. Both he and I work. We arrange the profits.

Cross-examined: I was at the Court of Revision. It was a mere dodge. Fitzgerald would not swear, because he was disgusted. I make the purchases. All the invoices are in my name. My business is all custom work.

Mr. Harrison contended that the voter was only entitled to one-third of the profits, and the property was only assessed for \$700. The voter had no interest in the land.

The VICE-CHANCELLOR said the evidence in effect showed a partnership of one-half each, after deducting the third for expenses spoken of by Duffy; and he would hold that where two partners were in business, and one of them owned the freehold where the business was carried on, both partners could vote if the assessment was sufficient. Vote held good.

JAMES LUNDY'S VOTE.

James Lundy: I voted at the election in March last. I voted on Johnstown town plots. They contain about 36 acres. There are three park lots. This property belonged to me when I voted. My father gave it to me; he is still living. Wm. Scott lived on this property. My father gave it to me two years or more ago. He considered that I had paid for it. He did not give me a deed. My father has a deed of it. He offered me a deed, but I did not care to take it. I am not a married man. I thought he could take care of the deed better than I could. I work at different places. My father has not made a will of this property. He has asked me to get some one to write out a will of the property for him. He said if I did not it might be too late. I was not in a hurry about his making the will; I think he has a right to make a will of it to me. The tenant pays rent. I receive part. My father has told me he received part. I don't know how much I received, it was under \$5. The tenant has but a small portion. It has not been rented more than a year. The rent was payable any time we wanted it. The rent is \$17.50 a year. It commenced April or May last. It was not under rent

at the time I voted. At that time it was not occupied by anybody. Crops were grown on it. I cropped it this season. I helped to crop it previously. Part of the crop I fed to the cattle, and part I lived upon. My father and brothers live upon the place. I live there too when I am at home. My father is not now living on any part of the 36 acres; he moved off two years ago. He did not pay me rent. It was in the spring he moved off. The place was then rented to James Millar. He paid \$35 a year. My father collected it. He gave me no part of it. He said he would give me this lot. This was when he bought the other. I allowed him to collect the rent as part payment.

Cross-examined : I consider that I have paid for the property. I worked for my father ever since I came of age. I gave him in money \$100 at one time, and \$50 at another time; also other two small sums. I considered he should have all this for the lot. It was called in the family my lot. My father had me assessed for it. I think I have been assessed for it for three or four years. I am not aware that my father was ever assessed for it. I am not his eldest son. My father told me that the land was mine, and that I might have it; have a deed of it any time I got married. My father made the bargain with Millar with my assent; I made the bargain with Scott. This season I have done some fencing on the place, and have worked it.

Re-examined : It is two years ago this fall that I paid the \$100. I paid the \$50 last summer. I did not pay these sums in pursuance of any bargain; I considered that I ought to pay these sums. These payments were made after he said I should have the place. I understood that I was to work for him or give him my earnings if I worked elsewhere. He said if I did this he would give me the place. I have done what I promised. He has given me the place in no other way than I have mentioned. I got no receipts for the money. My brothers have worked for him. I worked one year and six months out,

and gave him my wages. I gave all except what I spent for my clothes. I have been of age for five or six years. My brothers work out once in a while. They give him their wages ; I cannot say what for. They have their own ideas as to that.

Mr. Macleennan submitted that an agreement was shown by the evidence of the son that he should have the property. He contended that the father could not have voted upon the evidence. The son would have a right to file a bill for specific performance.

The VICE-CHANCELLOR : At the time of the assessment there was nothing but a voluntary gift without possession. Vote held bad.

WILLIAM MULLIN'S VOTE.

Patrick Mullin : I live in Augusta. William is my son. He voted on part of 6, in 2nd concession of Augusta. William owned it then. I had willed it to him ; that is his only title. I live on the place ; he does not. He is a farmer. He lives with Mr. Moran ; he works for him. William is my only child. He works the farm. I work a little on it ; all that I am able to do.

Cross-examined : I did not vote ; I am not assessed. My son alone voted on this property. William supports us, me and the old woman, whatever we do. The business is in William's name. I am 78. There are 6 acres of the property. If any help is required he hires it. Of the crops, what is not used he gets. He furnishes the seed. The neighbors do the ploughing ; they make a bee of it. William often comes home. He is 30 ; he is not married. He has been assessed for the property for three years. I told the assessors to put it down for my son. I did so because I could not work the place, and I considered my son had the place. My son buys the groceries required, or gives me the money. My wife is three years younger than I. My son owns the crops, except what is used. I had 200 acres, but this is all that is left.

Re-examined: My son gives us money when we want it. When help is needed he either turns in or hires labor. I never sell what is to spare, and have not done so since I willed the place to him. He has sold since. My other sons are all married. They used to give me money when I wanted it, and we kept no accounts.

Mr. Harrison contended that there was no evidence of any agreement between the father and son, and the son was not in actual occupation.

Mr. Maclellan urged that this was not a suspicious case; the father was not assessed for the lot. The father said the son got whatever was over and above the support of the family. Actual residence was not required to make occupation.

The VICE-CHANCELLOR did not think the son had such a beneficial interest in the property as would give him a vote, and he therefore held the vote bad.

JAMES HOLDEN'S VOTE.

James Holden: I voted at the election in question. I live in Morrisburg—not in this county. I voted on part of S. $\frac{1}{2}$ 33 in 5th con., Augusta. I was the sole owner and occupant at the time I voted. I have had the title for twenty-eight years. I bargained to sell this property in January or February last. The purchaser has not fulfilled his part, and has therefore not got his deed. The purchase money was to be paid part down, and part in instalments. The down payment was not made. It was to have been made when I gave the deed, and I am not prepared to give it yet. The bargain will be carried out next week. There is a memorandum in writing of the bargain. The lot is not improved; no house on it. To insure the bargain, he gave me \$50 at the time of the contract, and is to give \$600 when the deed is executed. I have not lived in this riding for upwards of 30 years. I have not the contract with me. The purchaser has the original and I have a copy.

Cross-examined: When I am prepared to give a deed I am to get the \$600. I am not prepared immediately to give the deed. I made an assignment in 1857, and I had not got the conveyance back though the estate has been settled. I have a transfer from the assignee; I got it two months ago. I needed this transfer to get the legal transfer. I was owner at the time of the revision.

Re-examined: For a number of years I had sold the purchaser timber off the lot before the contract I have mentioned. Walker is the purchaser; he has the right to the possession. Walker cropped the land last year. He had a right to crop and take the standing timber, or in certain portions under the former agreements. [Produces letters from 1865 to 1868.] Walker has been in possession for several years, and cropped the land under the agreements contained in these letters. There was nothing said in the agreement of February last about possession.

Mr. Richards contended that as the equitable owner was allowed a vote in the *Stormont case* (Blair's case, *ante*, p. 37), the legal owner could not also have a vote.

Mr. Harrison contended that both could not vote as owners; the legal owner could not take the oath, as he would have to swear that "he was actually possessed to his own use and benefit as owner."

Mr. Maclellan referred to *Rogers on Elections*, 31, 9th ed.

The VICE-CHANCELLOR said that he had not much doubt but that the vote was bad; where a tenant in possession buys the premises, he is considered as being in possession under the contract of purchase, and the vendor, though he may have, as here, given no deed, is a mere trustee for the purchaser. Vote held bad.

DANIEL NOBLIN'S VOTE.

Thomas Cosgrave: I live in Augusta. I know Daniel Noblin. He is assessed for 25 acres of the front of rear half of 33 in 6th concession. I bought this from him in

April, 1871. I produce the deed [22nd April, 1871]. I have occupied the land since my purchase. I allowed him to take some linewood off and plant a small parcel of land in potatoes; he planted two bushels. I took possession when I got my deed, and had it ever since. It was after I had cleared the parcel—about 15th June—that he went on the small parcel for potatoes. I gave him liberty to take some falling wood. The wood he took was taken last winter.

Cross-examined: He was a mason, and asked me if I would allow him to plant two bushels of oats. His family was living with him. This occurred about 1st June. I hadn't the parcel cleared off until after May; the potatoes were planted. Noblin had other land, 3 acres and a house, at the time he sold to me. This land was in another concession. He lived there with his father. I would not like to give \$200 for the 3 acres and barn. I can't say as to its value. When I bought the land there was lying about loose some wood he had cut. He had got this off before last May. I commenced burning 27th May.

The VICE-CHANCELLOR held that the voter had only a license to occupy a portion of the lot which he had sold to Cosgrave. Actual possession was given to, and taken by, the purchaser before the revision of the Assessment Roll, and after the voter had given Cosgrave his deed and it was after that and about the 15th June that the voter went in under the license to occupy the part in which he had planted potatoes. Vote held bad.

JOHN MORROW'S VOTE.

John Morrow: I voted in the west ward. The property I voted on is owned by my mother. She had a deed in 1871, at the time of assessment. I was assessed as occupant. I was living at home with my mother at the time. There are seven of us. We were all living at home with her at the time of assessment and do still, and have done so since

my father's death. I had no lease or conveyance from my mother, or any other writing up to the time of my voting. I am eldest of the boys.

Cross-examined : My father died in spring, 1870. There was then a mortgage on the place. My mother bought it under the mortgage. I paid for it out of my own earnings. I am the head of the house. I support the family, my mother and sisters ; a younger brother and I support them. He lives with us, he does not make as much as I do. He is not quite twenty-one ; I will be twenty-three in October. I pay the taxes ; I keep the premises in repair. I have made no improvements since my father died. There was no understanding when the deed was made to my mother that I was to live there, and it was to be my home. It was to be a home for my brothers and sisters too ; that was the agreement. Mr. Patrick held the mortgage ; \$600 was the purchase money. I did not see Mr. Patrick about it. It is not all paid yet. I gave \$100 at the start, and have given \$50 since. I agreed to pay off the amount due with the help of my brother. My father left no will. I am not sure that any deed has been made to my mother. My mother paid nothing on the mortgage. My brother paid something on it. Another brother, Charlie, paid something on it ; he is dead. The property is worth six hundred dollars at least.

Re-examined : There are papers in the house. I don't know but it is a deed that was made to her. I think it was in the spring of 1870 or fall of 1869 that I had the conversation with my mother. My mother asked me what I thought about buying the place, and I said, "Go ahead," and I would see that it would be paid. I can't remember that anything else was then said. There are four brothers of us still living. I meant that if the other brothers did not help her to pay, I would. I don't remember that any of my sisters or brothers were present. There were five brothers when my father died. Three of us were earning at the time, and all of us paid our wages

or some of them to my mother from time to time. Two sisters were also working, and I suppose they gave my mother some too; I understood they were doing so. I gave my mother as high as \$35 at a time. For the present year I have given her \$30 every month. She uses part for the expenses of the house. My brother gave her some also. We have been getting \$40 a month for the last three months. I have got sometimes \$40, and sometimes more. I think I have given her \$36 or \$37 at one time. I never gave her as much as \$40. My father had been away for five or six years before he died. He died in British Columbia. He used to send merely enough to pay the expenses of the house. I used to give my mother something out of my wages before my father's death. I did not for a couple of months give her more than I had been doing in my father's lifetime; for that time she didn't need more. My sisters also gave to my mother as before my father died. The place is a frame house with eight or nine rooms. If I got married, I don't know whether I would remain there with my wife and family. My brothers were to have the same rights as I; they were all to have their home on the place. Nothing was said then as to my sisters. \$300 has been paid on the place since my mother bought it; \$200 was paid down, and \$100 last fall.

Mr. Harrison contended the vote was good, both as that of an owner and an occupant. The mother was trustee for the children. The boy was the head of the house, and *in loco parentis*.

Mr. Fraser objected that the assessment was too low to qualify the voter.

Mr. Harrison said that objection had not been taken.

Mr. Fraser read the heading of the respondent's list of objected votes, and showed that it used the words "that the persons objected to were not owners, tenants and occupants within section 5," which required, among other things, a sufficient rating.

The VICE-CHANCELLOR held the heading of the respondent's list excluded the question of the value of the assessed property.

After further argument,

The VICE-CHANCELLOR said that he did not think in equity that the mother would be a trustee for the voter. The witness did not say that the property was bought for him ; he said he would see it paid for. The presumption was that it was bought for the mother. For the present the vote is struck off.

WILLIAM H. JONES' VOTE.

William H. Jones: I reside at Brockville, out of the Riding of South Grenville. I voted on real property in Prescott, east ward, four acres. I am owner under my mother's will [copy of will produced]. My brothers and sisters have not yet come of age. My mother was owner at her death. I have been in possession since 1864, and in receipt of the profits. I have rented it and been assessed for it. My mother died in 1862. In October, 1868, I rented the premises to one Knapp for three years. I got possession from him in the fall of 1871, his term having expired. Knapp had not the whole four acres. I used the rent of the four acres. I have been selling portions of the devised property. Ten children survived my mother, and are still living. These are not yet of age. I never lived on the property on which I have voted ; all of it that I own now is vacant. No improvements have been made on the unsold lots ; they were unimproved at my mother's death.

Cross-examined: I would not take \$1,500 for the whole ; I wouldn't take less than that. Some of us were of age in May, 1871 ; no more of us are of age now. I don't support any of my brothers or sisters. Very little rent has been received. If they want \$5 or \$10 I give it to them.

Re-examined: I am one of the parties beneficially entitled under the will. I have not been supporting the children ;

they have been supported by our father. He is Registrar. There has been no necessity for subscribing for their support and maintenance. They live in a house devised by my mother, and which I have since acquired. This is in Brockville.

Mr. Maclellan contended that the vote was bad. The voter might eventually have an interest in the land, at present he was only entitled to a contingent interest; besides, there was not sufficient assessed value to qualify the voter. The land, though sworn to be worth \$1,500, was assessed for \$400, and it ought to be assessed for \$3,000, so as to give a qualification to each of the parties interested.

Mr. Harrison said there was nothing to prevent a trustee voting when any part of the trust was in his own favor. He referred to *Rogers on Elections*, 27, 9th ed., and argued that in England a trustee could vote. The words in our statute (32 Vic., c. 21, s. 6, sub-s. 1), that a voter must be an owner, &c., "in his own right or in that of his wife," did not exclude the right of a trustee to vote.

The VICE-CHANCELLOR said at present he would hold that a trustee could not vote. What was meant was the real, the beneficial, owner should vote. The words used in the statute, referred to by Mr. Harrison, afforded a very strong presumption against the right of a trustee to vote; and referring to the terms of the oath, which required the voter to swear that he was "actually, truly, and in good faith possessed to his own use and benefit as owner," &c., he thought it was so strong as to put an end to the dispute. As to the question of the voter being an occupant, he appeared to have no present beneficial interest in the land, and no future interest, as he was excluded by the will. Vote held bad.

THOMAS PLACE'S VOTE.

Thomas Place: I voted at the Town Hall, fourth subdivision, Augusta. I formerly rented front half 27, in 6th (50

acres). I did so at the time of assessment in 1871. I own no other land. I sold 100 acres to one Carpenter. I made to him a deed of rear half of 27, in 6th concession, on the 27th February, 1871. I have had nothing to do with the land since I sold to Carpenter. He has kept it and occupied it ever since. I own 50 acres in all. I have no property except that described in the produced deed.

Cross-examined: I live on Lot 23, in 6th concession. I have owned it for a year and three-quarters. I owned no other property last year. I had 100 acres rented from Burns. I had it for three years. I gave it up May, 1872. This property is also in the 6th concession. It is about three-quarters of a mile below where I live, west of me. The lot I sold to Carpenter is west of me. The place I rented adjoins the Carpenter lot. There is a Thomas D. Place in the township, I have had nothing to do with the lot sold to Carpenter since the time I sold it to him. I can't read. I bought the 25 acres I live on from Colville. The lot I leased from Burns is the front 100 acres of the same 27 already mentioned. I paid the taxes of this.

Re-examined: I rented from John Burns. The Birkleys last summer took the crops off the land I had rented from Mr. Burns. They got possession in the spring of this year. I had a written lease from Burns.

The Assessment Roll was produced, from which it appeared that the voter was assessed for the rear 100 acres of Lot 27, in 6th (sold to Carpenter, 27th February, 1871), and that he was not assessed for the property he was in possession of as owner (23, in 6th con.), or as tenant (front 100 acres, 27, in 6th con.)

The VICE-CHANCELLOR said he would follow the decision of Chief Justice Hagarty in a similar case at Brockville, where a voter who was assessed for a wrong lot (No. 34 instead of No. 35) was held not qualified to vote. (*Brockville case*, 7 Can. L. J. 221; s.c., *Brough on Elections*, 11). The ruling of the Chief Justice was supported by the statute. The mistake in the number of a lot did not come

under the same rule as the mistake of a name, as the latter is provided for in the statute and in the voter's oath. Vote held bad.

ROBERT STEWART'S VOTE.

Robert Stewart : I voted on part of Lot 37, 4th con. Augusta. The deed produced is to myself and my brother. He and I have been joint owners since our purchase some years ago. Two or three acres were under cultivation last year. Rosnald Field was cultivating it last year. He was not assessed for it. There are 40 acres more or less. I did not see the assessor. My brother had a vote on other land, and is assessed for it.

Cross-examined : I did not give the value of the lot to the assessor. The property is worth \$1,000. We paid \$500 for it. My interest is worth that.

The Assessment Roll was produced, and showed that the lot was assessed at \$200.

The VICE-CHANCELLOR held that parol evidence of value was inadmissible to alter the value assessed against the property in the Assessment Roll. The voter and his brother were joint owners of the lot, and the assessed value was not sufficient to give each a vote. Vote held bad.

At the close of the scrutiny it was admitted that the votes stood equal for each of the candidates. The parties then agreed that the election should be declared void, and that each party should pay his own costs.

The VICE-CHANCELLOR thereupon declared the election void.

(6 *Journal Legis. Assem.*, 1873, p. 3).

PROVINCIAL ELECTIONS, 1875.

WEST TORONTO (2).

BEFORE CHIEF JUSTICE DRAPER.

TORONTO, 6th, 7th, and 10th May, 1875.

WILLIAM ADAMSON, *Petitioner*, v. ROBERT BELL, *Respondent*.

*Agent accepting and drinking spirituous liquor during polling hours—
Corrupt practices by a particular class—32 Vic., c. 21, s. 66; 36
Vic., c. 2, secs. 1, 3.*

The 66th section of 32 Vic., c. 21 (Election Law of 1868), provides that "no spirituous or fermented liquors or drinks shall be sold or given to any person" during the day appointed for polling in the wards or municipalities in which the polls are held; and by s. 1 of 36 Vic., c. 2, "corrupt practice" means "any violation of the 66th section of the Election Law of 1868 during the hours appointed for polling;" and by s. 3 of the latter Act any corrupt practice "committed by any candidate at an election, or by his agent, whether with or without the actual knowledge or consent of such candidate," avoids the election.

On the day of the election in question, and during the hours appointed for polling, one M., an agent of the respondent for the purposes of the election, was offered by a person unknown to him spirituous liquor (whiskey) in a bottle, which such agent, after remonstrating with such person, accepted and drank at the polling place where such agent then was. The unknown person also gave spirituous liquor from the same bottle to other persons then present.

Held, that as the Legislature had, by the provisions as to the selling or giving of liquor during the hours of polling, provided for the punishment of one particular class, which was defined to be the seller or giver, it did not intend to include the other class, the purchaser or receiver, to which no reference was made, except inferentially; and that therefore such agent, as the receiver of spirituous liquor during such polling hours, was not guilty of a corrupt practice.

The petition contained the usual charges as to corrupt practices. The election took place on the 11th and 18th January, 1875.

Mr. Bethune and Mr. N. W. Hoyles for petitioner.

Mr. Alfred Boulton and Mr. Evatt for respondent.

The evidence on the charge of corrupt practices by an agent of the respondent was as follows :

John A. Macdonell : Q.—You acted as an agent for Mr. Bell? A.—Yes? Q.—Are you aware of any liquor

having been given on polling day, or sold during the hours of polling? A.—No; I have heard vague reports. Q.—Never mind what you have heard, except you have heard it from Mr. Bell; were you present when any liquor was given? A.—Yes; there was a man at the polling place where I stood; I did not know his name; I never saw him before or since; he gave me some; it was at the polling place in Simcoe Street; it was at some hour in the morning after the poll opened; I do not know who it was; he had only one bottle; I think he gave it to others. Q.—Do you know any one who got any? A.—No; when the man came up I saw he was somewhat intoxicated; I never heard him called by name. I do not know who he was. Q.—Did you remonstrate with him? A.—Yes; it was a very cold day; I had been out from 9 o'clock in the morning to this hour, about 11, and it was very cold and stormy; and he was very pressing that I should take some, and at last I did take some and others took some; I have not the slightest idea who he was. Q.—Do you happen to know where he got the liquor? A.—No. Q.—What kind of liquor was it? A.—It was, I think, whiskey. Q.—That was the only liquor you know of having been given on polling day? A.—It was, except after the election was over.

Cross-examined: Q.—This about the bottle occurred in the street? A.—Yes. Q.—Was he particular in his attentions, or did he give the liquor to both parties? A.—To both parties, I think. Q.—Did he come there again? A.—I don't think he came back, and no one else tried this.

Evidence was also given of treating during polling hours on the day of the election, at taverns within the electoral division, by John Ball and Richard Duplex, referred to in the judgment.

Mr. Bethune said three cases of treating had been proved—one by Mr. Ball, another, the treating of an

unknown person by Duplex, and the third, the treating of Mr. Macdonell by an unknown person. It was not necessary to consider the first and second cases, as there was not sufficient proof of agency. The third case, however, was one which came up for the first time under the statute. The 66th section of the Act of 1868 prohibited the keeping open of taverns and the sale or giving of spirituous liquor during the hours of polling to any person within the limits of the municipality. By the earlier Act of 1871, relating to the trial of controverted elections, corrupt practices were defined to be bribery, undue influence, and illegal and prohibited acts in reference to elections or any of such offences. Under that Act the *Brockville* election trial (*ante* p. 139) took place, and the Court of Queen's Bench construed the law so that the word "corruptly" was held to govern the whole section. In the original Ontario Act, treating at meetings was a corrupt practice when done "with intent to promote the election" of a candidate. That phrase governed the whole section; but the Legislature had omitted that phrase from the new Act (36 Vic., c. 2, s. 2) with the design of getting rid of the question of "intent" altogether. The manifest policy of the law was to stop the giving or selling of liquors on the polling day, whether the intent were innocent or not. He referred to the Interpretation Act, 31 Vic., cap. 1, sec. 8, sub-sec. 39, to show that all statutes were to be construed in a fair, large and liberal manner, so as to ensure the attainment of the object of the Act. The object of the provision in the Election Act was to prevent the giving or selling of liquor. Two persons must be concerned in any such transaction or violation of the law, and so the person who received the liquor was as much a violator of the law as he who gave it. *Rex v. Pitt*, 3 Burr. 1335; and *Rex v. Vaughan*, 4 Burr. 2501. It had been argued that while it was an offence to receive a bribe it was none to give one; but Lord Mansfield said that what it was a crime to take, it was a crime to give; the two things are reciprocal. It

was clear that if Mr. Macdonell had given the liquor he would have violated the section, and it would be an anomaly to say that in receiving it he was not also guilty of a violation of the law. In the *Cornwall case* (Dom.) (a) the Chancellor had held that the old canon of a distinction of construction between penal and civil statutes did not now exist. Mr. Macdonell, as agent of the respondent, had been guilty of an act in direct opposition to the spirit and intent of the law, and if it were not so held it would open the door to an easy evasion of the provision of the statute against corrupt practices. It might be said that an election should not be lightly set aside, but a Judge had declared that if only two shillings and sixpence had been spent in bribery, he would have no choice but to avoid the election (*Blackburn case*, 1 O'M. and H. 202); and in the 36 Vic., cap. 2., sec. 3, no distinction was made between giving liquor and giving money.

Mr. *Boulton* contended that the intention of the amended election law was to close taverns and stores, and prevent the proprietors carrying liquor to barns or other places and selling it there, and thus avoid being fined. The object of the present law was to secure purity of election. Judging from the evidence, it appeared that the intention of the Legislature had been carried out in this instance, and it would be a most unfortunate thing if, after an election had been conducted as this had been, it should be set aside because of a trifling act, such as was made the ground of avoiding it. He contended there must be an "intent" in the giving of liquor, and that the simple giving or selling of a glass of liquor on polling day would not avoid the election. He thought the clause was put in the Act without considering the full effect it would have, and that the Court would construe it differently from what the petitioner contended.

DRAPER, C. J., A.—The only charge in the petition which was entered into at the trial was that the respondent was

(a) Reported Dominion Elections, 1874, *post*.

personally and by his agents, before, during and after the election, guilty of corrupt practices, as defined by the Controverted Elections Act of 1871 and the Elections Act of 1873, whereby the said election had become void. Mr. Bethune opened the case very briefly, stating that it was impossible for him to explain what particular facts he expected to prove by the different witnesses he should call. They all, or nearly all, belonged to the opposite party, and it would have been useless to apply to them for information. He could only say that he hoped to prove that there were corrupt practices, as defined by the statute, and that they were committed by or under the authority of the respondent or by his agents, for whose acts, in these respects, he was answerable; that he fully expected that he should prove that the respondent was put forward as a candidate by the Liberal-Conservative Association in the City of Toronto, on the understanding that he was to be put to no expense, and that he placed himself in their hands, thereby constituting all its members who took part in the election as his agents, and in support of this assertion he read a part of the respondent's deposition. The trial lasted part of two days, during which fifty-five witnesses were examined. I adjourned rather earlier than I had intended, as there was one witness, whose probable importance to the petitioner had only become apparent by the testimony given during the first day; and I thought it better, understanding that no witnesses would be called for the defence, that the testimony in support of the petition should be completed before Mr. Bethune summed up.

At the close of this witness's examination, Mr. Bethune admitted that the charge of bribery was altogether unsustainable, and that he must rest the case upon the allegation of treating. Three cases of treating during the election had been proved. Two of them he would not press, as the fact that the parties who gave the liquor were agents of the respondent was not established; but he contended that the case of Mr. John A. Macdonell was different. There was no

possibility of doubting that he was agent of the respondent. He himself admitted that he received and drank some liquor during the polling hours; and Mr. Bethune contended that the original Ontario Act, 32 Vic., cap. 21, sec. 61, which made treating with intent to promote the election of a candidate illegal, having been altered by omitting the words "with intent to promote the election of a candidate," it showed that the offence no longer consisted in the intent but in the act. He then argued that the person who drank liquor given him was as much an offender against the 66th sec. of 32 Vic., cap. 21, as he who gave it; and, therefore, as Mr. Macdonell had accepted and drank within the limits of the municipality some spirituous or fermented liquor during the time when the poll was open, and was an agent of the respondent, that act was sufficient to avoid the election. The point on which the petitioner's case was finally rested was not raised or brought under my notice until the last witness called to support the petition had been examined. Not one instance of bribery had been—I will not say established; but there was no evidence given upon which there was even a *prima facie* case of bribery. The evidence also did not connect the sitting member personally with any act which could sustain the charge of corrupt practices, so far as bribery is concerned. But several witnesses were examined to prove either treating or a breach of the 66th section of the 32 Vic., cap. 21, which requires that every hotel, tavern or shop in which spirituous or fermented liquors or drinks are ordinarily sold, shall be closed during the day appointed for polling in the wards of municipalities in which the polls are held, and prohibits selling or giving to any person within the limits of such municipality, during the said period, any spirituous or fermented liquors, under a penalty of \$100 in every such case. There was evidence which was in my judgment sufficient to prove at least two cases in which this clause of the Act was violated. But in no such case was there any evidence connecting the offenders with the successful candidate or any of his

agents ; and for this reason the petitioner's counsel gave them up.

There remained one case, however, in which there was no such defect. Mr. Macdonell was examined, and unequivocally admitted himself to be an agent of the respondent for the purposes of his election. He gave in evidence that he was at No. 1 division, St. Patrick's Ward, during the polling. There was a man at the polling booth on Simcoe Street, upon the street, who had a bottle of liquor, and who seemed to be a little intoxicated. Mr. Macdonell did not know his name, and has not seen him since, nor has he any idea who he was. The day was cold, the man was very pressing, and Mr. Macdonell took some whiskey from him. It was during the hours of polling. It was contended that this avoided the election; that there was a clear violation of the statute; that liquor could not be given or sold unless there was a purchaser or a receiver; and as by the act of receiving the giver was enabled to commit the offence, the receiver became a *particeps criminis*. Reference was made to the definition of corrupt practices, in the 34 Vic., cap. 3, sec. 3, and to the repeal of that definition by 36 Vic., cap. 2, sec. 1, and the substitution of another definition in lieu thereof, which latter definition makes any violation of the 66th section during the hours of polling a corrupt practice. This change in the law does not, however, affect the question I am called upon to decide. It leaves the point untouched whether the words "No spirituous liquors or fermented liquors or drinks shall be sold or given" make the purchaser or recipient in effect a seller or giver, and as such subject to a penalty of \$100 in every such case, for "sell" or "give" are the only words in the Act which can be made applicable. It might have been argued on the part of the respondent with as much show of reason, that the earlier part of the section shows that the Legislature had in view a stringent preventative to the dangers of having taverns and other places where liquors are usually sold kept open during

the polling day, by requiring such places to be kept shut, and by forbidding the sale of such liquors. In the 68th section the contracting to vote for money and the receiving of money on account of having voted or refrained from voting, are treated and subjected to a penalty as distinct offences, though in the preceding section the giving or lending money, or agreeing to do so, to influence a voter, is subjected to the same penalty. The Legislature in that instance evidently did not consider that by punishing the lender or giver of money, they had also provided for the punishment of him who borrowed or received. Upon the construction contended for by the petitioner's counsel, in making the 66th section consist of two separate parts, the first relating to the closing of hotels, &c., and the latter of a general character, it appears to me that if any person in his private way give a glass of wine or beer to a friend who happened to call upon him during polling hours, he would himself be subject to the penalty of \$100, and his friend would be similarly liable. I have not now to deal with the former of these propositions, but the latter is involved on the present occasion. I cannot adopt a conclusion which appears to me unwarranted by the plain meaning of the words of the Act, nor hold that where the Legislature provides for the punishment of one particular class, which they distinctly define, they intended to include another to which they make no reference unless inferentially, and when, by the 67th and 68th clauses of the Act, they show that they considered that by providing for the punishment of the giver of a bribe they had not provided for the punishment of the receiver of it. For these reasons I feel compelled to hold that the petition is not proved; that the respondent, Robert Bell, was duly elected and returned; and shall certify accordingly to the Speaker. I shall also report to the Speaker that no corrupt practice has been proved to have been committed at the said election; and that there is no reason to believe that corrupt practices have extensively prevailed at the said election. Costs to follow the event. (9 *Journal Legis. Assem.*, 1875-6, p. 20.)

WELLAND (2).

BEFORE MR. JUSTICE GWYNNE.

WELLAND, 17th, 18th and 28th May, 1875.

WILLIAM BUCHNER, *Petitioner*, v. JAMES G. CURRIE,
Respondent.

Principles guiding a Judge in deciding Election Cases—Intimidation of Government Servants—Corrupt Treating—Evidence as to offer of Bribes—Delegates to a Convention, not Agents—Agency and Sub-Agency—Corrupt Practice by a tavern-keeper as a Sub-Agent—32 Vic., c. 21, ss. 61 and 66; 36 Vic., c. 2, s. 2.

Before subjecting a candidate to the penalty of disqualification, the Judge should feel well assured, beyond all possibility of mistake, that the offence charged is established. If there is an honest conflict of testimony as to the offence charged, or if acts or language are reasonably susceptible of two interpretations, one innocent and the other culpable, the Judge is to take care that he does not adopt the culpable interpretation unless, after the most careful consideration, he is convinced that in view of all the circumstances it is the only one which the evidence warrants his adopting as the true one.

The respondent was charged with intimidating Government servants, during his speech at the nomination of candidates, by threatening to procure the removal of all Government servants who should not vote for him, or who should vote against him. The evidence showed that, though in the heat of debate, and when irritated by one U., he used strong language, there was no foundation for the corrupt charge; and as it should not have been made, the costs in respect of the same were given to the respondent against the petitioner.

About an hour after a meeting of a few friends of the respondent at a tavern, one of their number was sent some distance to buy oysters for their own refreshment, of which the parties and others partook. The following day a friend of the respondent treated at a tavern, and not having change, the respondent gave him 25 cents to pay for the treat.

Held not to be corrupt treating, nor a violation of 36 Vic., c. 2, s. 2.

Where the evidence as to the offer of bribes was contradictory, and the parties making charges of bribery appeared to have borne indifferent characters:

Held, that the offer of bribes was not satisfactorily established.

The delegates to a political convention assembled for the purpose of selecting a candidate, who never had intercourse with the candidate selected, and who never canvassed in his behalf, cannot be considered as agents for such candidate.

The respondent gave to one H. some canvassing books, with directions to put them into good hands to be selected by him for canvassing. H. gave one of the books to B., a tavern-keeper, and B. canvassed for the respondent. B. was found guilty of a corrupt practice in keeping that part of his tavern wherein liquors were kept in store, so open that persons could and did enter the store-room and drink spirituous liquors there during polling hours on the day of election.

Held, that H. was specially authorized by the respondent to appoint sub-agents, and had under such authority appointed B. as a sub agent, and that the corrupt practices committed by B. as such sub-agent of the respondent avoided the election.

The respondent was ordered to pay the costs of the petition and trial, except the costs of certain issues found in favor of respondent, part of which costs were to be paid by petitioner to the respondent; and as to part, each party was ordered to bear his own.

The petition contained the usual charges of corrupt practices.

Mr. James A. Miller and Mr. Peter McCarthy for petitioner.

Mr. Arthur S. Hardy, and the Respondent in person, for the respondent.

The evidence in support of the charges against the respondent and his agents is set forth in the judgment.

GWYNNE, J.—At the close of the evidence taken in this matter, the counsel for the petitioner rested his case upon five points upon which the respondent should be unseated. (1) Upon the ground of intimidation by himself personally in his speech at the nomination, as to Government servants on the Welland Canal; (2) upon the ground of treating, commencing at the oyster supper at Whiteman's; (3) upon the ground of bribes offered, as is alleged, to Harper, William Brown, and one Archer, by one Hellems, who, as is contended, was an agent of the respondent; (4) upon the ground of undue influence alleged to have been exercised by one Hagar, who, as is contended, was an agent of the respondent, and as such threatened one Samuel Fraser that he would lose his employment as bridge-tender at the canal unless he should vote for the respondent; and (5) for corrupt practices committed in violation of secs. 61 and 66 of 32 Vic., cap. 21, by one Luther Boardman, who, as is asserted, was an agent of the respondent, and for whose act the respondent is to be held responsible.

Before subjecting a candidate to the penalty imposed by sub-sec. 2 of sec. 3 of 36 Vic., cap. 2, I should feel well assured, beyond all possibility of a mistake, that the offence charged, which is attended with such consequences, is established. If there be what appears to be an honest conflict of testimony as to the existence of these matters which constitute the offence charged, or if these matters

consist of acts or language which are reasonably susceptible of two interpretations, one innocent and the other culpable, a very grave responsibility is imposed upon the Judge to take care that he shall not adopt the culpable interpretation unless, after the most careful consideration he is able to give to the matter in hand, his mind is convinced that, in view of all the circumstances, it is the only one which the evidence warrants his adopting as the true one.

Now, as to the first of the above charges, namely, intimidation in the respondent's speech at the nomination, it is to be observed that it is difficult to believe that it could have entered into the mind of any man of ordinary intelligence—not to say of a gentleman of the legal profession and of considerable experience in public life—at the nomination, in the presence as well of his opponent and of *his* friends, as in the presence of *his own* friends, to threaten that he would procure the removal of all the Government servants at the canal who should not vote for him or who should vote against him; and it seems quite incredible that if such a threat had been made in such a presence, that the utterer should not have been instantly called to account *flagrante delicto*. But there is abundance of evidence by reason of which I have no difficulty in arriving at the conclusion that, although in the heat of debate, and under the irritation caused perhaps by the manner in which the respondent was interrupted by the witness Upper, he may have made use of some language which had better have been left unused, there is no foundation for the corrupt charge, namely, of intimidation, which has been made against him; and I am of opinion that this charge should not have been made, and I shall therefore direct that so much of the costs of the petition and trial as relates to this charge shall be paid by the petitioner to the respondent.

As to the second charge, involved in what is contended to be corrupt treating, by reason of the oyster supper at Whiteman's tavern, and of the treating which took place

at the same tavern on the following day, I am of opinion upon the evidence, and so find as a matter of fact, that the meeting which had been held at Whiteman's about an hour before the oyster supper was a meeting of a few friends of the respondent, and that after having transacted what business they may have had in hand, and about three-quarters of an hour to an hour after the close of the meeting, they for their own refreshment procured one of their number to go to Port Colborne, some little distance off, to buy some oysters, which having been procured, were at their own expense, or at the expense of some of them, served up at Whiteman's tavern; and although one or perhaps two persons who had formerly been and were still believed to be friends of the respondent, and to be then present as such, but who in this election afterwards proved not to be his friends, partook of those oysters at the expense of the others who supplied them, I can see nothing which can in this supper be properly construed to be corrupt treating, and it was not contended to be a violation of the 2nd sec. of 36 Vic., cap. 2. The complaint as to what took place on the following day consists in this: that Dr. Haney, who was going about with the respondent, visiting a few of the latter's friends, did, as he swore is his constant practice when meeting his friends, treat some of them at the tavern, and that one Gagner, a friend of the respondent, did in the respondent's presence treat a friend of his own, and not having any small change about him, did receive from the respondent 25 cents to pay for the treat. Now, whether or not these acts or any of them were done with the corrupt intent of influencing the election, is a question of fact to be determined according to the circumstances disclosed in the evidence. The language of Mr. Justice Blackburn in the *Bewdley* case (1 O'M. and H. 20) is the most appropriate upon this point, and I hesitate not to adopt it in leading me to my decision upon this point of the case. He says: "In considering what is corrupt treating and what is not, we must look broadly at the common sense of the thing. There is an old legal maxim

Inter apices juris summa injuria. To go by the strict letter of the law often would produce very grave wrong. If I was to say that an election was void upon a single case of that sort, we should be going to the *apices juris*, and the result would be *summa injuria*; therefore, the inquiry must be as to the extent and amount of such cases." To hold such an amount of treating as is relied upon in this case, and given under the circumstances appearing in the evidence, to be corruptly given with the intent of influencing the election, would be well calculated, as it appears to me, to bring a most wholesome law into contempt. I must therefore hold that this charge is not established.

As to the charge involved in the third of the above heads of complaint: Harper, whose story has in it some particulars which appear to be improbable, and who by his own account is not a person of the most incorrupt integrity, is flatly contradicted by Hellems, the person whom he accuses of offering to him the bribe which he says was offered to him; Brown is contradicted not only by Hellems but also by another witness; and Archer is contradicted by Hellems and also by three or four other witnesses. In view of these contradictions, and of the indifferent characters which appear to be borne by the persons making these charges, I cannot arrive at any other conclusion than that it is not established to my satisfaction that the bribes which these witnesses allege to have been offered to them respectively by Hellems were in fact ever offered to them; so that it becomes unnecessary to inquire how far the fact of Hellems having been upon one or two occasions, or perhaps oftener, specially requested by the respondent to attend at public meetings of the electors for him and in his stead, and to address the meetings on his behalf, would constitute him an agent for all those acts done to promote the respondent's election, and would render the respondent responsible.

As to the fourth charge, Samuel Fraser and his wife, who make the charge, are contradicted by Hagar, the person against whom it is made. There is no evidence

whatever that Hagar ever canvassed a single vote, unless it be that he canvassed Fraser, who makes the charge against him, and he himself denies that he canvassed him or any one else. He appears to have been one of the Reform delegates sent to the convention which put forward the respondent as the candidate of the Reform party. He does not appear to have been spoken to by the respondent, or to have been directly or indirectly requested to act in any particular for him. A canvassing book containing the names of the voters in the town of Welland appears to have got into his possession, but how it did get into his possession does not appear, and he distinctly swore that he never made any use of it. Now, although the respondent was put forward by the Reform Association as the candidate of the party, and although he accepted the nomination, and although a candidate put forward by a political association may so deal with the members of the Association, and may so place himself in their hands with the view of availing himself of the benefits of their organization, and of the influence of the individual members of the Association, as to make them his agents, for whose acts he should be responsible, still it appears to me that it would be going altogether too far to hold that every delegate to a convention assembled for the purpose merely of selecting a candidate, although he never had any intercourse directly or indirectly with the candidate, and although he does not appear to have acted in any instance or canvassed on his behalf, unless in the sole particular case which is charged and relied upon in avoiding the election, is an agent of the candidate, so as to make him responsible for the act complained of. If it could be so held, it would make a delegate opposed to the nomination of the candidate selected by the majority, able to defeat his election by a single case of bribery committed for the express purpose of invalidating the election. In short, in such case the acceptance of the nomination by the candidate selected by the majority would have the effect of constituting every member of the convention,

whether a supporter or opposed to the nomination, of the candidate selected, his agent, for whose acts the candidate would be responsible. Such a result would be repugnant to the plainest principles of justice. I cannot, therefore, upon the evidence in this case, arrive at the conclusion that Hagar was an agent of the respondent, for whose acts he should be held responsible to the avoidance of the election, even though it should be true that Hagar did commit the offence of which Fraser and his wife accuse him, as to which I do not, for this reason, think it necessary to express an opinion.

There remains to be considered the fifth ground of complaint, for the consideration of which I reserved my judgment. That Luther Boardman has been guilty of corrupt practices, and has thereby exposed himself not only to the penalty imposed by sec. 66 of 32 Vic., cap. 2, but also to the disqualifications enacted by sec. 49 of 34 Vic., cap. 3, there can be no doubt. Upon the facts disclosed in evidence, and notwithstanding his own statement to the effect that he cautioned people against going into the open store-room in rear of his shop and tavern, where the liquors to supply the tavern were kept, I can come to no other conclusion than that he, being a tavern-keeper, did, at the very spot where the poll in the township of Crowland was being taken, and during the polling hours, keep that part of his tavern wherein his liquors were kept in store so open that all persons attending the poll for the purpose of voting could and did, at their free will and pleasure, enter the room and drink spirituous liquors there kept, and I have no difficulty in determining that this store-room was kept accessible in the manner in which it was, in order that the persons attending the poll might so enter it and supply themselves with drink at their pleasure. If such conduct as is here brought home to Boardman were not pronounced to be a plain violation of sec. 66 of 32 Vic., cap. 21, that section would be a dead letter. But it is not only as in violation of sec. 66 that the conduct of Boardman is

culpable. It was in every way calculated to influence and corrupt that class of loose and undecided electors who hang around polling places, withholding their votes, undecided until the last moment how they shall vote or whether or not they will vote at all, and who, knowing that this place was open, where their appetites for intoxicating drinks could be gratified during the entire day, could readily be induced, when their senses might be steeped in inebriety, to vote for the candidate known to be the friend of their liberal entertainer.

The only question which remains is whether or not the respondent is to be affected by, or whether he can claim exemption from responsibility for Boardman's corrupt conduct—whether, in fact, Boardman is or is not to be regarded as an agent of the respondent so as to make the latter responsible for the acts of the former.

The law of agency as applied to election petitions has been expressed by different learned judges to be quite different from that applied to the common relation of principal and agent. "A candidate," as is said by Grove, J., in the *Taunton case*, 30 L. T. N. S., 127, "may be, and I would add that, unless the wholesome Act passed for the purpose of preventing corrupt practices at elections be wholly frustrated, he must be responsible for the acts of one acting on his behalf, though the acts are beyond the scope of the authority given, or indeed in violation of the most express injunctions."

So far as regards the present question, to establish agency in Boardman for which the respondent would be responsible, he must be proved to have, by himself or by an authorized agent, employed Boardman to act on his behalf, or he must have to some extent, either through himself or by the act of an authorized agent, put himself in Boardman's hands, or have made common cause with him, or have put faith in him, or have availed himself of his services in doing what is currently done by a committee-man or canvasser for promoting the election, or have been aware that he was so acting for him without

repudiation. In the *Bewdley case* (1 O'M. & H. 18), Blackburn, J., has held that an agent made the candidate responsible for the acts of a sub-agent as well as the agent, even though the candidate did not know and was not brought into personal contact with the sub-agent.

I proceed now to consider the evidence upon which the question in this case turns.

It appears that a convention of an association called the Reform Association, was called for the purpose of nominating a candidate in the Reform interest. To the convention each municipality in the electoral division elected eight delegates, which eight delegates were in the habit of acting (with one of their number as chairman) as local branches or committees of the Reform Association in their respective municipalities. The convention of delegates so constituted nominated the respondent as the candidate to stand in the Reform interest. The respondent had been put forward in like manner upon former occasions.

Mr. Price, Reeve of Welland, himself a member of the convention, says that the committees of the Reform Association always acted for the Reform candidate; that it had always been understood that they were to act for the Reform candidate; that Mr. Currie, the present respondent, had stood for the county in former elections, and that witness never knew him to repudiate those committees, which have always acted for the candidate, although he says that Mr. Currie never attended the committee meetings. In former elections a central committee of the Reform Association used to meet, but none met at this election; but he was not aware of any reason why there was no meeting of a central committee on this election. The custom had been on former occasions for the members of the committees of the Reform Association to act as committees for Mr. Currie to promote his election, and reports were made from the local committees to the Central Reform Committee.

John Henderson, Reeve of Crowland, a most respectable witness, who gave his testimony in a most candid manner, and who impressed me with the belief that he did not wish any corrupt practices to be adopted by any one in promotion of the respondent's election, says that he was chairman of the committee of the Reform Association for the township of Crowland. The committee, consisting of eight, including himself, were elected as delegates to the convention which nominated Mr. Currie, and he was a warm supporter of Mr. Currie on former elections. Upon this election he was an active canvasser, and worked for Mr. Currie, and that was well known. Mr. Currie wrote to him appointing a meeting of electors to be held for the township of Crowland, and requesting him to get his friends to turn out and attend the meeting. Mr. Currie himself came to the meeting, which was held in the Town Hall; but before the meeting at Boardman's tavern, where he was staying, he gave to witness 10 or 12 canvassing books, with the names of all voters printed in each, made up by Mr. Currie himself from printed voters' lists, which he cut into slips and pasted in books. These books, Henderson says, were given to him by Mr. Currie to put "into good hands to be selected by him for canvassing." He does not know that Mr. Currie knew that he was chairman, but he knew that he (Henderson) had canvassed before for him. These books Henderson distributed among the other members of the Reform Committee of the township, and one he gave to Boardman, not, however, a member of the committee. The intention was that all were to report the progress of their work to the central committee of the Reform Association on nomination day; but the business at the nomination was so protracted that the central committee did not meet. When Mr. Currie gave the books to Henderson, he said they contained the voters' lists, and "we were to see how the parties would go." Boardman was the only canvasser in the school section where he lived. On the Saturday before the polling day there was a meeting of the com-

mittee of eight and a few others at Boardman's. Boardman himself was there, and he, as well as others, made a return of the result of his canvass, and stated that there would be a large majority for Mr. Currie in his section. He made a return showing a good majority. At this meeting arrangements were made as to bringing up voters to the poll early on the Monday, and on the Sunday, Henderson gave Mr. Currie a general return of the result of the canvass of the township. Boardman, as Mr. Henderson says, was expected to work like any other Reformer. Boardman did not say he would attend to bringing up voters, but he saw Henderson on the Saturday before polling day, and told him that all was right. Mr. Currie himself says that although he appointed no committee specially to act for him, he did ask some of his friends to work for him. He says that he sent the canvassing books in parcels to his friends in the different municipalities. He knew that Henderson was working for him, and in that capacity he gave him the books, not as chairman of any committee. He thought the books would be of service to his friends, and he gave them to Henderson at Boardman's to enable them to advance the canvass for him, and to let them see who the voters were. He left the election, he says, to his friends, and Henderson had been a friend of his for three years. He appointed no scrutineer but at four polling places; the rest were appointed by the local committees in the respective municipalities. The committee of which John Henderson was chairman appointed James Henderson, John's brother, scrutineer for the poll in the township of Crowland, held where Boardman resided, and on the Sunday before the polling day John informed the respondent of his appointment, and he approved of it. The respondent says that he himself despatched the posters for meetings by mail or parcel post, and Boardman says that the posters for the meeting at Crowland came to his address. Boardman, in the course of his canvass, ascertained that a Mr. Brough, although a friend of Mr. Currie's, was cross about some slight, and he

advised Mr. Currie that it would be advisable for him to go and see him. He says that the book which he had was handed to him for the purpose of his canvassing the school section in which he lived in Mr. Currie's behalf, and although he did not, as he says, go through the section, he canvassed all persons who came to the tavern and shop, and made, as we have seen, a return to Mr. Henderson of the result.

Under this evidence it seems clear beyond a doubt that John Henderson was the agent of the respondent, and one specially authorized to appoint other agents under him to canvass and act in the respondent's interest. It appears that he did appoint Boardman as such sub-agent, and, upon the whole, I am compelled to say that upon this evidence I can arrive at no other conclusion than that such a degree of assistance was rendered by Boardman in virtue of the selection made of him as a trustworthy person, to whom the interests of the respondent were confided by John Henderson in virtue of the power in that behalf vested in him by the respondent, that the respondent must abide the consequences and be responsible for the malpractices of Boardman, although such malpractices were committed without his actual knowledge or consent. The 3rd section of 36 Vic., cap. 2, in that respect is very explicit and very peremptory. My painful duty, in accordance with the view I feel compelled to take of the evidence, is therefore to declare the election of the respondent to have been and to be null and void, by reason of corrupt practices committed by Luther Boardman, an agent of the respondent, in the promotion of his election, but which corrupt practices were committed by the said Luther Boardman without the actual knowledge or consent of the respondent.

I do further order that the respondent do pay to the petitioner the costs of the said petition and trial, except so much of said costs as may relate to the second, third, and fourth heads of complaint above in this my judgment enumerated, as to which several heads of complaint

I do order that each party do bear and pay his own costs, and except also so much of the said costs as relate to the first head of complaint herein above enumerated, the costs of which I do order that the petitioner do pay to the respondent.

With his certificate to the Speaker of the result of the trial, the learned Judge reported that Luther Boardman was proved to have been guilty of corrupt practices, in this, that being a tavern-keeper and as such authorized to sell spirituous and fermented liquors, he the said Luther Boardman did, in violation of the provision of the statute in that behalf, keep open his said tavern during the hours of polling on the day of the election; and that he, being an agent of the said James George Currie, did give, furnish and supply, at a meeting of electors assembled for the purpose of voting at one of the polling places at which votes were polled in the township of Crowland, at the said election, spirituous and fermented liquors during the hours in which the poll was being taken at the said polling place, to all such persons, electors and others, as were desirous of partaking of such spirituous and fermented liquors, and many of whom did partake thereof.

(9 *Journal Legis. Assem.*, 1875-6, p. 5.)

RUSSELL.

BEFORE CHANCELLOR SPRAGGE.

L'ORIGINAL, 3rd and 4th June, 1875.

ROBERT OGILVIE *et al*, *Petitioners*, v. ADAM JACOB BAKER,
Respondent.

Corrupt practices by Agent—Admission of Counsel—Keeping tavern open and treating on Polling Day.

One F., a tavern-keeper, was given \$5 by the respondent, and requested to appoint a scrutineer to act for the respondent at the poll on polling day. F. kept his tavern open on polling day, and various persons treated there during polling hours. Counsel for the respondent, after the evidence of the above facts had been given, admitted that F. was an agent of the respondent, and that his acts were sufficient to avoid the election.

Held, that although the Court did not adjudicate that the respondent, by giving the \$5 and requesting F. to appoint a scrutineer, had constituted him an agent for all purposes, it was the practice of the Court to take the admission of counsel in place of proof of agency, and therefore the admission of counsel as to F.'s agency was sufficient.

Held further, that F., as such agent, had been guilty of a corrupt practice in keeping his tavern open on polling day, and that such corrupt practice avoided the election.

The petition contained the usual charges of corrupt practices.

Mr. J. K. Kerr for petitioner.

Mr. John O'Connor, Q.C., for respondent.

The evidence of the corrupt practices on which the election was avoided was as follows :

Michael Foubert : I keep a tavern. Mr. Baker was at my place on the Sunday before the election. He gave me authority to appoint an agent for him, and gave me \$5 on the Sunday and told me it was to pay him. I sent for Antoine Lamotte and asked him if he would act as agent at the poll for Mr. Baker, and that I would see that it was all right. The polling place was about three or four acres from my tavern. I don't recollect Baker being at my place during the polling day. I was back and forward during the day. I think Kelly treated, Robillard treated, and I think Toilferd treated during the day. I don't remember anybody else. I don't remember whether I treated or not, but I may have done so.

Michael McArdle : Was at St. Joseph's Village on polling day. Was at Foubert's in the morning ; was treated there ; this was between 9 and 10 o'clock. There were several treats. Foubert was there ; do not know that he treated ; seven or eight persons there.

Mr. O'Connor stated that the facts brought out in the evidence of Michael Foubert, who he admitted was an agent of the respondent, were sufficient to avoid the election, and he offered to do so ; the respondent to be called to explain the personal charges.

Mr. Kerr accepted this proposition.

The respondent was then called, and after denying the charges of personal bribery adduced in evidence against him, stated as to treating: "My general habit as to treating is 'rather free.' I seldom have entered a tavern and left without treating. The custom of the country is to treat freely at taverns, and I followed out my usual custom."

SPRAGGE, C., said that the evidence had established corrupt practices by an agent, but that no personal charges against the respondent were proven. He had no reason to believe that bribery or corrupt practices had extensively prevailed throughout the constituency. With regard to the agency of the man Foubert, he held that he had acted in gross violation of the law. He did not adjudicate that the respondent, having left \$5 with Foubert to engage a scrutineer for the polling day, had constituted him an agent for all purposes, but simply as an agent for that particular purpose; but as it was the practice of the Court to take the admissions of counsel in proof of agency, he felt warranted in taking the admission now made by the respondent's counsel. Foubert being guilty of the corrupt practice of keeping his house open on polling day was sufficient to void the election.

The practice on former occasions was to manage the elections through the agency of third persons, and many instances were on record of very corrupt practices by agents. It was to meet this end that the law was made as stringent as it is, because it was manifest that unless the candidates themselves were held responsible for the acts of their agents, there would be very corrupt practices in the elections. He thought the law was a very necessary one to meet that evil.

As to the treating in this case, he did not think that it had been brought home to the respondent within the meaning of the law. He might say that a practice more demoralizing than the system of treating in vogue could scarcely exist. It was a pity, he thought, that public

sentiment runs the way it does. A man goes into a tavern, and it seems to be expected of him as a matter of course that he should give ardent spirits to whatever persons were there present, and unless he does so he is considered of a mean and niggardly disposition. The consequence was the very widespread evil of intemperance. There was not a case which came before him in which this evil had not forced itself upon his attention, and it was one which prevailed in all parts of the country alike.

He thought the personal charges had been explained, and to his mind satisfactorily explained, in an ingenuous and honest manner. Mr. Kerr had said very properly that they could not be pressed upon him after the evidence of the respondent. He could not have found in the face of the denial that these personal charges were established. He did not say that the denial of the respondent alone would have relieved the Court from the necessity of adjudicating on the personal charges, but at least as much weight was due to the respondent's evidence of the denial of the charges as to the evidence against him, and it was to himself satisfactory that Mr. Baker had purged himself so thoroughly from the personal charges that had been made against him. These personal charges the Court did not give effect to except on clear and satisfactory evidence, and certainly in this case such evidence had not been adduced. Therefore, it only remained to certify to the Speaker that the election was void. With regard to costs, they would follow the event.

With his certificate to the Speaker of the result of the trial, the learned Judge reported that Michael Foubert was proved to have been guilty of corrupt practice at the said election.

(9 *Journal Legis. Assem.*, 1875-6, p. 6.)

CORNWALL.

BEFORE CHANCELLOR SPRAGGE.

CORNWALL, 8th June, 1875.

JOHN GOODALL SNETZINGER, *Petitioner*, v. ALEXANDER
FRASER McINTYRE, *Respondent*.

Bribery by an Agent—Admission of Counsel.

A voter who had been frequently fined for drunkenness was canvassed by C. to vote for the respondent, and was asked by him "how much of that money" (paid in fines) "he would take back and leave town until the election was over."

Counsel for the respondent admitted that C. was an agent of the respondent, and that the evidence was sufficient to avoid the election.

Held, that the election was void on account of corrupt practices by an agent of the respondent.

The petition contained the usual charges of corrupt practices.

Mr. R. A. Harrison, Q.C., Mr. D. B. MacLennan, and Mr. Chisholm, for petitioner.

Mr. J. K. Kerr, and the Respondent in person, for respondent.

The evidence given at the trial was as follows:

Michael Loo: I am an elector of the district, and voted at the late election. I was asked to vote for McIntyre by Robert Conroy the evening before the polling day. That was the first time he saw me about my vote. There was another man present at the time. He saw me in my own house. I believe Dr. Allen occupies the position of Police Magistrate, and I know him. I had been fined several times by him. I paid my fines before the election. I did not like it at all. I paid upwards of \$100 in fines, and I suppose it was well known. Conroy and I talked of it that night. I was in bed when he came, and not feeling well. I told my son to get up and see who was there. I was called to come down-stairs, and saw Conroy and another man talking to my son. Conroy produced a bottle of whiskey. I refused to drink that night, though they told me to take hold and drink some. They urged

me to drink, but I persisted in my refusal. My son drank. He asked me if I was going to vote with the McIntyre party. I told him I could not give an answer, as my mind was not made up. He said I must know how I was going to vote. I told him I would not know until the morning. He asked me what they had done to put me against them, and I spoke of the money taken from me by the fines. I said that that company had taken too much money out of me for me now to support them. He replied, asking me how much of that money I would take back and leave town until the election was over. I told him I never left my country yet dishonestly, and I would not do so now. He replied, Don't vote to-morrow without coming to see me, and then bid me good night and went off. I am sometimes too fond of whiskey. Conroy is a hotel-keeper in this town. I was fined for drinking whiskey. He did not say whether he had money to pay my fines. I did not leave town, nor did I see him before I voted. That was the only time he was with me.

Cross-examined: No money was paid to me by Conroy or by any one else. I took it that Conroy promised to return me some of the fines on condition of my leaving town. I do not belong to any particular place. I lived about twenty years in the States. I have lived here since March a year ago, and have since that time been fined to the extent of upwards of \$100. I have been drunk without being fined. I take it whenever I can get it handily.

Mr. Kerr admitted that Conroy was an agent of the respondent, and stated that he considered this evidence sufficient to void the election, and that the respondent would agree to have the election declared void.

Mr. Harrison agreed to this.

SPRAGGE, C.—The election will be declared void on account of corrupt practices by an agent, but not by the candidate, nor by any one with his knowledge and con-

sent. I shall report that corrupt practices were not proved before me to have extensively prevailed in the election.

With his certificate to the Speaker of the result of the trial, the learned Judge reported that Robert Conroy was proved to have been guilty of corrupt practices at the said election.

(9 *Journal Legis. Assem.*, 1875-6, p. 6.)

DUNDAS.

BEFORE CHANCELLOR SPRAGGE.

MORRISBURG, 14th, 15th and 16th June, 1875.

SIMON S. COOK, *Petitioner*, v. ANDREW BRODER, *Respondent*.

Meeting of Electors—Treating at—Bribery—Evidence of corrupt offer—Treating on Nomination Day a corrupt practice—Treating Act, 7 Wm. III., c. 4; 32 Vic., c. 21, s. 61; 36 Vic., c. 2, s. 2.

The respondent, who was a member of a temperance organization, held an election meeting in a locality within the electoral division, and about an hour after the meeting had dispersed, went to a tavern where he met about 10 or 15 persons in the bar-room, to whom he made the remark, "Boys, will you have something?" Nothing was then taken; but one E., a supporter of the respondent, said he would treat, and he did treat the persons present, and the respondent gave him the money to pay for the treat.

Held, 1. That as the meeting for promoting the election had dispersed an hour before the respondent went to the tavern, this was not a meeting of electors.

2. That the treating not having been done with a corrupt intent, was not an offence under 32 Vic., c. 21, s. 61, as amended by 36 Vic., c. 2, s. 2, nor at common law.

Quære, Whether the Treating Act, 7 William III., c. 4, is in force in this Province.

The respondent had in 1873 compromised with his creditors for 50 cents in the \$1, and then promised to pay all his creditors in full. About the time of the election he paid one S., who had at the two previous elections supported the opposing candidate, a portion of the promised amount.

Held, under the circumstances, the payment was not bribery.

Where one party affirmed and the other party denied a corrupt offer between them as to voting for the respondent,

Held, that the offer was not sufficiently proved.

One F., an agent of the respondent, on the day of the nomination of candidates to contest the election, and while the speaking was going on, treated a large number of persons at a tavern across the street from the place of the nomination, for which he paid \$7 or \$8.

Held a corrupt practice by an agent of the respondent, which avoided the election.

The petition set forth the usual charges of corrupt practices.

Mr. Bethune for petitioner.

Mr. Alfred Boulton and Mr. J. B. Read for respondent.

The evidence affecting the election, referred to in the judgment, was as follows:

Andrew Broder, Respondent: I have been a member of temperance associations off and on for many years. I am a total abstainer. In January last I was a member of the Independent Order of Good Templars, whose pledge is not to touch, taste, or handle intoxicating liquors, beer, wine, or cider. It may be part of the obligation not to buy or sell, but I don't know. I did not treat during the canvass. We had a meeting in the Agricultural Hall called by hand bill; I made a speech. After the meeting I went to Dixon's, and remained there an hour. I don't recollect seeing Genesee Empey at Dixon's hotel. I did not treat then. I went from Dixon's to Powell's. The bar-room was filled; perhaps 10 or 15 were there. I spoke to Powell, who was a friend of mine, and then I made the remark: "Boys, will you have something?" or, "Hadn't you better take something?" This was in the bar-room. I was nearly as far from the bar as I could get. The room was small. After I said this there was nothing set up. Genesee Empey spoke to me, and asked me if the law allowed me to treat—something to that effect. I said, I think, that I did not believe the law hindered it. He said, "I'll do it," and I handed Genesee Empey there and then the money to pay for it. I handed him the money in the bar, opposite the door of the sitting-room. I did not attempt to conceal my giving him the money. I gave him a \$4 bill; he gave me back the change afterwards; \$1 was spent. I think Genesee Empey was a supporter of mine. He did not accompany me there; I came with Mr. Armstrong. This is the only time I treated during the election.

John Suffel: I live in Mountain, and am a farmer. I was at one time a creditor of Andrew Broder; it was for six tubs of butter. It was between \$75 and \$100. I signed the composition deed for 50 cents in the \$1. This was in 1873. I got part in cash and part by note; the note was paid in 1873. I signed the composition deed in May, 1873. I received \$10 from A. Broder some time in December, a short time before Christmas. He paid it to me voluntarily in his own store; he said he was going to pay every man in full, dollar for dollar. He took a memorandum of it. He took me behind the counter, and said he wanted to give me a little on the old score. He was talking about holding meetings in Williamsburg at this time. He did not ask me to support him. I had not always voted on that side. I had supported Cook in the election of July, 1867, and that of 1871 as well. I did not tell Broder that I was going to support him; I never mentioned it to him. We had not been talking of the payment in full. I am John Suffel the younger. He owed my father something and paid him; so my father says, but I do not know this of my own knowledge. The half of my debt was \$35 or \$50; there would be \$20 due me still after the \$10. This was before Christmas. He spoke to me yesterday, and said he was not going to deny it. I voted for Broder.

The respondent was also examined on this charge, and gave explanations of the payment to Suffel and others as set out in the judgment, and added: "These payments were made on the understanding that I was to pay my liabilities and settle in full. These were all amounts beyond the composition."

Abraham Bockus: I live in Morrisburg, and am a joiner by trade. I am a voter. Previous to the election I had a conversation with Dr. Hickey; my brother-in-law, Milan Daley, was in the house at the time. Hickey asked me if I had promised my vote to any one; I said, No. He then spoke favorably of Mr. Andrew Broder, and asked me if I would support him, saying that if I did they would give

me a good summer's work. He did not say where the work would be. The conversation was out of doors.

Charles E. Hickey, M.D.: I am a medical practitioner here. (His agency was admitted by Mr. Boulton for the respondent). I know Bockus; I canvassed him for Broder a few days before the election; I asked him how he was going to vote, and said that I would take it as a favor if he would vote for Broder. He took exception to Cook's course in Parliament, and I took advantage of this, and urged him as strongly as I could. He said he did not know A. Broder, and I told him he was to be here shortly and he could hear him. He gave me to understand that if he was engaged at work on that day he would not vote. He had been working for me on a job at one of the houses belonging to the Rose estate; but neither he nor I referred to this. I swear that not one word of any kind was said about the future work; he or some one for him must have invented the story.

Alexander Farlinger: I am a member of the Conservative Association of Dundas, and President of the Morrisburg Branch. I treated on nomination day after standing a couple of hours, feeling very cold and tired. George Casselman asked me to go. Some one was then speaking. We went to the bar-room, which was full; it was as far as across the street from the nomination place; about 40 or 50 feet separated. I was asked by Casselman to go and get something to drink. Some one said: "This is Farlinger, who ought to be Reeve, and this ought to be his treat." I did not drink, because all the good whiskey was drunk before I got a chance. I think I paid between seven or eight dollars for the treat. I don't know the landlord by name. He probably counted the drinks. I paid him just what he asked. Speaking was still going on when I got out. The Returning Officer had gone before I went to the hotel, and I don't think he returned.

The evidence as to agency showed that the witness attended meetings at William Broder's (who was respond-

ent's election agent) to promote the election, and is sufficiently set out in the judgment.

Upon the opening of the Court on the next morning, the following judgment was given :

SPRAGGE, C.—The first point in Mr. Bethune's argument was the treating at Dixon's Corners. This treat, although not direct by respondent, but through the instrumentality of Empey, was in substance a treat by the respondent. This treating was impeached as a corrupt act on three grounds: 1st, As against the statutes of 1868 and 1873; 2nd, As against the Treating Act, 7 William III., c. 4; and 3rd, As an offence at common law.

In the first place, was this a meeting of the electors assembled for the purpose of promoting the election? [The learned Judge reviewed the facts of the case, showing that the meeting had dispersed one hour before the respondent went to the hotel.] There was no adjournment of the meeting; no preconcerted arrangement of meeting at the hotel, but an accidental meeting of a few persons. He held it was not therefore a meeting of the electors. In the second place, assuming the Treating Act of William III. to be in force here, was this treating a corrupt act *per se*? He referred to the authorities to show that "treating in order to be elected, or for being elected," did not apply to this case. He doubted whether the Act of William III. was in force here (*a*), and cited the decision of Chief Justice Hagarty in the *Glengarry case* (*ante* p. 8) in support of his opinion. 3rd, Was it corrupt treating at common law? At first treating was considered a species of bribery—bribery by refreshment—and that a corrupt motive was in the heart of the giver and the receiver. It is laid down by Rogers (11th Ed., p. 366) that it may be doubted whether treating was ever

(a) In the *Lennox and Addington case* (1841), the committee (of which Messrs. W. H. Draper, T. C. Aylwin, J. E. Small, and others were members) held "that treating on the part of the sitting member was proved, but that it is not, in the opinion of the committee, a legal ground for avoiding the election under the laws in force in that part of this Province, heretofore Upper Canada."—*Patrick's Election Precedents*, p. 44.

an offence at common law. The true consideration is, was the thing done corruptly, *i.e.*, with the object of doing what the Legislature intended to forbid? The Judge must look broadly at the common sense of the thing as to whether it was corrupt or not. He felt no difficulty in negating the idea of corrupt intent; and taking all the circumstances into consideration, he did not consider this act of treating came within the meaning of the statute.

The payment to Suffel must be looked upon as a debt of honor, it having been promised when the deed of composition was made. Suffel's character, appearance, and the manner in which he gave his evidence, placed him above suspicion. Then the large number of other cases in which the respondent had carried out his promises—notably to women—robbed the act of any appearance of bribery which it might otherwise have worn. He ruled that in this also there was no corrupt intent.

As to the Bockus case, he inclined to the belief that something was said about building, but that Bockus, in his anxiety to get work, fancied more than was said. He could not think Dr. Hickey made any such promise as was implied.

The treating by Farlinger at the nomination he held came within the mischief of the law, as it was a treating of the electors at a meeting of the electors to promote the election. The large, extensive powers given by the respondent to his brother, constituted him an agent in the largest sense, giving him power to appoint sub-agents; and he attached more weight to William Broder's connection with Farlinger as constituting him an agent, than to the latter's position in the Conservative Association. The common-sense view of the evidence was that Farlinger was an agent.

In conclusion, he acquitted the respondent of all corrupt acts by himself, or his agents with his knowledge. He congratulated the respondent upon the manner in which the election had been conducted. There was an entire absence of evidence of corruption; and few persons

had been subjected to so searching an examination as the respondent had been. He acquitted him and his active supporters of all corrupt acts. Although he believed Mr. Farlinger was not actuated by any corrupt motives in giving the treat at the nomination, still the act was one which came within the meaning of the statute as a corrupt practice, and he could not overlook it. In consequence of that act, and that alone, he was compelled to void the election.

The learned Judge certified to the Speaker that the election was void, and reported that no person was proved to have been guilty of corrupt practices.

(9 *Journal Legis. Assem.*, 1875-6, p. 7.)

WEST HASTINGS.

BEFORE CHANCELLOR SPRAGGE.

BELLEVILLE, 17th and 18th May, 1875.

ELISHA WESLEY, *Petitioner*, v. THOMAS WILLS, *Respondent*.

Payment of Election Expenses by the Candidate—Corrupt Practices—Member's Oath—36 Vic., c. 2, ss. 7-12; 38 Vic., c. 3, s. 6.

The Act 36 Vic., c. 2, ss. 7-12, requires all election expenses of candidates shall be paid through an election agent; and the Act 38 Vic., c. 3, s. 6, requires the member-elect to swear that he had not paid and will not pay election expenses except through an agent, and that he "has not been guilty of any other corrupt practice in respect of the said election." Certain payments were made by the respondent personally, and not through an election agent.

Held, that such payments were not corrupt practices.

Held, that the words "other corrupt practices" in the member's oath meant "any corrupt practice."

The petition contained the usual allegations as to corrupt practices.

Mr. Bethune and Mr. Clute for petitioner.

Mr. Wallbridge, Q.C., and Mr. S. J. Bull, for respondent.

The facts of the case are set out in the judgment.

Mr. Bethune contended that sec. 7 of the Act of 1873, 36 Vic., c. 2, absolutely forbade any payment of election expenses except through an agent, and made it a corrupt act. He referred to the *Cashel case* (1 O'M. & H. 288) and the *Penryn case* (*Ibid.* 131).

Mr. Wallbridge, for the respondent, contended that no man could be found guilty of a corrupt act unless the statute expressly declared that the doing of a certain act should be corrupt, and the statute had not so declared. As to the payment to the son, the money had not been paid, and the money therefore remained the property of the father in the hands of the son, and was unappropriated. The other payment was before the nomination of the respondent as a candidate.

SPRAGGE, C., said that the technical points raised by the petitioner narrowed themselves into two cases: first, that a hall had been hired by the respondent previous to the nomination, which had been used by him, and that he had paid for it without making the payment through an expense agent; and secondly, that the respondent had given some \$4 to his son, a lad under age, in order to take him to an adjoining village on business connected with the election subsequent to the nomination. The son, it appeared from the evidence, had not appropriated the money to that object, and the agent of the respondent had subsequently paid for the horse hire in the manner required by the Act. There was an entire absence of merit in these objections; they were technical in the strictest sense of the term, and should, considering the circumstances, be met by the most technical criticism of the Act itself. The question to be considered was: Do these acts constitute a corrupt practice? A definition of corrupt practices had been given in the Controverted Elections Act of 1871, sec. 3. This had been repealed by the 36 Vic., c. 2, and under the last mentioned Act, corrupt practices were defined as meaning "bribery," "treating," etc.; under s. 46, "personation;" under s. 61, "providing

entertainment;" under s. 64, "hiring of teams;" and under s. 66, "keeping open of public houses and giving of liquor during polling hours." The argument that the member's oath prescribed by 38 Vic., c. 3, s. 6, requiring the successful candidate, before taking his seat, to swear that he had not made and would not make any payment in respect of the election, because it required that he should also swear that he had not been guilty of "any other corrupt practice in respect of the said election," made the payments mentioned corrupt practices under the statute, could not be sustained. He thought that the oath should read "any," and that the word "other" had crept into the Act through inadvertence. As to the last item not being in the statement of expenses, he did not consider that the *Cashel case* (1 O'M. & H. 288) was an authority on this point. There the agent had not been notified of his appointment, nor was he aware of it until after the election. The candidate had himself paid by cheque all the expenses of the election, and some of the sums given by him having been appropriated to corrupt purposes, the respondent was, under the decision of Baron Fitzgerald, made to suffer the consequences. He did not consider the objections were sustained, and he would overrule them. As to the election itself, there had been an entire failure of proof to sustain the charges of corrupt practices; and this election, and another which he had tried, would teach politicians that notwithstanding the stringency of the law, it is possible to have elections so pure and honest that they will stand the test of the strictest inquiry. The petitioner having so entirely failed, must bear the consequence in the matter of costs.

(9 *Journal Legis. Assem.*, 1875-6, p. 21.)

LONDON.

BEFORE CHANCELLOR SPRAGGE.

LONDON, 21st to 23rd June, 1875.

WILLIAM JARMAN, *Petitioner*, v. WILLIAM R. MEREDITH,
Respondent.

Candidate treating during canvass without corrupt intent—Treating in a private house during polling hours—Charity not Bribery—Limited agency.

The treating of persons by a candidate at a tavern during his canvass is not a treating of electors with corrupt motives.

Where a member of the respondent's committee, on the day of election, invited some of his friends to his house, which was opposite the polling booth, and gave them beer, &c., during or soon after polling hours :

Held not a contravention of 32 Vic., c. 21, s. 66.

Where half a cord of wood was given to a voter in poor circumstances during the election, and the giver swore that it was given out of charity ; and

Where a voter was bailed out of jail on the day of polling by a friend, but according to the evidence without reference to the election :

Held not acts of bribery.

Where a political organization, after nominating their candidate, divided into committees " to look after voters in the particular wards in which they resided ;" and the respondent had not given authority to any member of such committees, nor to any canvasser, to canvass generally :

Held, that one K., who was a member of the Committee for Ward No. 2, and who was alleged to have committed an act of bribery in Ward No. 6, having no authority to canvass in the latter ward, was an agent with limited authority to canvass in Ward No. 2 only, and therefore the respondent could not be made liable for his alleged acts.

K., the agent referred to, while canvassing a voter in Ward No. 6, gave him money to get beer, for which the voter paid a lesser sum, and as the voter was poor, told him to keep the change.

Held, under the circumstances, not an act of bribery.

The petition contained the usual charges of corrupt practices.

Mr. J. K. Kerr for petitioner.

Mr. Robinson, Q.C., and *Mr. H. Becher*, for respondent.

The judgment sufficiently states the facts affecting the cases disposed of, except the following case, which was mainly relied upon by the petitioner.

Sarah Woolston : I remember the Meredith-Durand election. My husband is Walter Woolston ; he is a carpen-

ter by trade. He was canvassed on the Saturday evening before the polling. I don't know the gentleman's name who asked my husband's vote. I was standing at the door when he was passing, and he asked me if my husband was going to vote ; he said he would make it all right with me if I would get my husband to support Mr. Meredith. I said I would do all in my power. He returned a couple of times that evening, pretty late ; when he came the second time I had not then seen my husband. He went in and talked to my husband ; I also went in and told my husband to give Mr. Meredith his vote, as he had always been on that side. He said he had not determined how he would vote. The canvasser told me to send my husband to his house on Monday morning, and my husband went there ; I saw the two together. There was an offer of money to me by this gentleman. He took some money out of his trousers' pocket, and said he would make it all right if I would get my husband to vote right. I got no money except some to pay for some beer ; he gave me a 50c. piece. I got a quart of beer ; it cost ten cents. He asked my husband if he would not like a glass of beer. My husband took the money and returned with the beer. He told my husband to put the change in his pocket, and he did so. He afterwards gave my husband 25 cents to get another quart ; this was a couple of hours afterwards. He told him to put the change over in his pocket. The gentleman never "made it all right with me" after. I told my husband that this gentleman would make it all right with me.

Cross-examined : No sum was named ; nothing was promised definitely. I never got anything ; nothing was ever asked for.

Re-examined : The person said he "would make it all right," and he held the money out in his hand.

Walter Woolston : I am the husband of the last witness. I was not canvassed for Mr. Meredith, except that I was asked by one gentleman to vote for him, either on the Friday or Saturday, in the evening. The person who

asked me is a cab-driver ; Robert Keightley is his name ; he lived near where I then resided ; he came to my house and asked me ; we were then in the room off the shop. When he first asked me I told him I had not determined how I would go. He offered no inducement to me. He came several times in the night. The first time he came was after supper. I had been at a meeting ; he remained there quite a while. We had some beer ; I got it, but he, Keightley, furnished the money, a 50c. piece. He told me to get the beer, and I got a quart, for which I paid ten or fifteen cents ; we drank it between us. We were talking about the election while drinking. He told me to keep the change, and I kept it accordingly. He afterwards gave me some more money to get a further supply of beer. I only had to go to the next house for it ; we drank that too. He was there for some time ; I paid ten cents for it the second time. I remember there was some change ; he told me to keep that too, and that it would do to get me a drink in the morning. He urged me to vote for Meredith. He went away about twelve. My wife asked me to vote for Mr. Meredith ; she said this gentleman was going to give her a present if I voted that way. He was there before I saw him the first time. He remained quite a time the last time. I accompanied him to the door as he was leaving. He said nothing to my wife except good-night ; I heard nothing more. I did not see him offer my wife money. She told me if she were me she would vote for Mr. Meredith. On Monday I went to Keightley's house, in the morning—the polling day. He said he supposed I would vote all right ; nothing further. We went to the polling-place. We drove there in a cab ; there were three others in the hack, but they were strangers to me ; I imagine they were electors. I went into the polling booth and voted. I remained about the polling place for some time and then went home. I have since received no consideration for my vote. I have seen Keightley, and think I reminded him of the promise made. We talked of the election, and I told him he had said to my wife he

would make it all right. He said there was a protest entered now.

Cross-examined : This gentleman never held out any inducement to me, and I never saw him talking to my wife, and did not see him putting his hand in his pocket. I remember his leaving the house the last time. I have no recollection of seeing him put his hand in his pocket ; all the money I got was what he gave me for the beer.

Robert Keightley : I remember the Meredith-Durand election ; I took part in it. I was on the committee for Ward No. 2. I attended some of the meetings. I asked some voters to vote for Mr Meredith. I may have reported some of them to the committee. I took some voters to the poll on election day ; I also took Mr. Woolston. I had asked him to vote for Mr. Meredith some few nights before. I canvassed him in his own place. I saw his wife and told her what I wanted ; I asked her to try and get her husband to vote for Mr. Meredith ; she said she would. I did not say I would make it all right ; I deny emphatically that I held out any inducement directly or indirectly. We had something to drink ; I think it was beer. I proposed we should have it, and gave the money, 50 cents, to get it ; the husband and I drank it, I taking but little ; his wife may have taken some. I do not recollect beer being got a second time that night ; my impression is there was none. We were talking considerable about the election. My object in going there was to get his vote. When I sent for the beer my object was to talk matters over pleasantly about the election. I voted in division four in No. 2 Ward, and canvassed there principally. He voted in No. 6 Ward. A canvasser told me he did not know where Woolston lived, and that led me to go there. I may have canvassed in No. 3, but I cannot recollect. I canvassed wherever I saw people.

Cross-examined : Woolston's vote was in No. 6 Ward, but he lived in No. 2 Ward, having moved there before. His name was not on my book for canvassing. I got no change for the 50 cents ; they were pleading such poverty,

I thought it would be hard to take back the change. I don't think the change was offered to me.

At the close of the argument of counsel the Court adjourned, and on the next day the following judgment was delivered :

SPRAGGE, C., said : The petitioner's case was yesterday rested by Mr. Kerr on the Mill's case, Pritchard's case, the treating at the Revere House, and the Woolston case.

The charge of treating at the Revere House against the respondent himself had, in his opinion, no foundation ; it was not treating of the electors, nor was it treating with corrupt motives.

As to Mr. McCormick's case : McCormick was a supporter of the respondent, and on his committee. His dwelling house was opposite one of the polling places, and at a late hour of polling (after the polling had been finished, the witness said), he asked two or three or four of his friends to go over to his house. On the table was some beer, and also elderberry wine and cakes, which the parties partook of. It was contended that this was a controvention of section 66 of the Act. He did not think that it was so ; and believed that the fact that the witness stated, that a number of Mr. Durand's friends were amongst those whom he invited, was a proof that no corrupt influences were intended. He decided that no corrupt practices had been proven in this case.

The next case was what was known as the Pinkham case. In it there had been considerable conflict of evidence ; but he thought he could take Brown's account of what took place as the one most likely to be correct. Brown, who was an alderman, was charged with bribery. There was the evidence of Pinkham and Trainham for the respondent in addition to that of Brown. Now the note he had made of this was, that Trainham was an active man, and was acting on behalf of Durand. The witness Brown was an active supporter of Meredith, and appeared to be a truthful man. It appeared that

Pinkham had always supported respondent, and this was proved without any doubt. He had gone to vote, but hesitated, as he said, because Alderman Brown had promised to give him half a cord of wood if he voted for the other side. This appeared to be the only obstacle, and if what Trainham had deposed to were true, then it would be a clear case of bribery. But a different version is given to the story by Brown, who says, that when Pinkham stated his difficulty, he said, "Go in and vote like a man; and if you are really in want, the city will relieve you. If you are really in want, I will give you sufficient to keep you from starving." Now, it had been proved that Pinkham was in bad circumstances; he had got wood from the city before; and it had also been proved that Brown had relieved him before, and was in the habit of relieving others. Trainham's mode of getting information was not to be commended; and he obtained what information he did get at a disadvantage. Mr. Justice O'Brien in the *Youghal case* (1 O'M. & H. 294), held that where it had been proven that money was given in charity, it could not be regarded as bribery, and this appeared to be one of a similar nature. Brown having stated on his oath, and he had no reason to disbelieve him, that he gave this wood to Pinkham out of charity, he therefore decided that no bribery had taken place.

With reference to the case of Mills, who was bailed out of jail by Woods, it appeared that the witness, Mills, was a particular friend of Woods; and the latter, on his oath, had stated that he did not belong to Meredith's committee, and did not even know that Mills had a vote. He preferred to regard the case in that light, and that Woods bailed Mills out as a friend, and not with the view of getting him to vote for the respondent.

But the case on which Mr. Kerr mainly relied was that known by the name of the Woolston case. As to that, there were two questions of fact: The first is the question of agency. When that question was brought before

him by Mr. Kerr, he had expressed his opinion on it, and he had not any reason to alter that opinion. As to the contention of Mr. Kerr, that all the members of the Liberal-Conservative Association were agents of Mr. Meredith, he was not prepared to accede to this; it rested mainly on that association bringing out Mr. Meredith. He was the gentleman of their nomination, or, as it had been said in evidence, "the standard-bearer of the party." That party decided to bring him out at a general meeting—a mass meeting—which was called, and Mr. Meredith accepted the nomination. At that meeting those present broke up into knots, the different sections choosing the representatives for the wards in which they were voters. As soon as that was done the functions of the Conservative Association were at an end, and a new arrangement entered upon. He thought they might as well say that if a requisition to a man to become a candidate was signed by 100 or 200 electors, the act of signing it constituted them his agents, as that the Conservative Association were so because they brought out Mr. Meredith. It was clearly explained to the committees then formed to promote the respondent's election, that they were to look after voters in the particular wards in which they resided; they had no right to canvass in any other ward. The principle of agency might have been established if authority from Mr. Meredith had been given to any canvasser to canvass generally; then he would have been canvassing under Mr. Meredith's sanction, and the respondent would have to be responsible for the acts of such canvasser. This authority does not appear to have been granted in this particular case. The person charged with having bribed Woolston is a man named Keightley, who lived in No. 2 Ward, whilst the person Woolston lived in No. 6 Ward. The committee for the ward in which Woolston lived dealt with that man, and the respondent could not be made responsible for Keightley's act, seeing he had no authority from the respondent to canvass out of the ward in which he was appointed. It had been maintained

that a book had been supplied to Keightley containing all the names of the electors in the city, but it does not appear to have been such; it was only a book with the names in his own ward. Neither did Keightley appear to have got any general authority from the respondent to act for him; the respondent appeared to regard him as a man of zeal with little discretion, and not a man to be altogether trusted with his confidence.

Having thus stated his views with regard to agency, he thought it was unnecessary for him to go into the acts of bribery said to have been used on the occasion of inducing Woolston to give his vote. There was a conflict of evidence, and each party had given their own account. He preferred to accept the evidence of the witness Keightley himself, and to hold, as in the case of Pinkham, that the change received for the beer was given as charity, and, therefore, that Woolston was not bribed. The promise of money to Mrs. Woolston would have been an act of bribery had it been sufficiently proved. The act on Keightley's part (as stated by himself) he held to be a suspicious act—a most dangerous act—and showed a good deal of impropriety on his part; but it had not, in his opinion, been sufficiently proved to constitute an act of bribery for which a candidate could be made responsible.

With reference to the law as applicable to treating and bribery, he said it had been much needed in the land, and past experience showed it had been much needed in the city of London. There were in all communities some electors who were apt to be corrupted. Some were apt to be corrupted by drink, and there were others—and perhaps they were more in number—who would sell their votes for gain; for this reason, a strict and stringent election law was required, and he disagreed with those judges who held otherwise. The determination of Mr. Meredith was that he would rather stay at home than be returned corruptly, and the result of this inquiry had shown that he had not been returned corruptly. He was thus enabled to form a very different opinion of the city

of London from that stated by his brother Hagarty at the last trial. The present inquiry had shown him that there could be an election conducted on honest and pure principles.

The particulars contained charges of bribery and corruption against the respondent and a large number of his supporters which there was not a tittle of evidence to prove. There may be an excuse for this partly from the fact that such charges had been made at a former election, and partly because there are charges in the particulars which those that got them up only expected to prove. This course was not justifiable, because the particulars could be amended at any time before the trial; and those who got up the bill of particulars ought to have been much more careful in doing so; these charges were not only not proven, but entirely disproven. He concluded by congratulating Mr. Meredith upon having come out of the election with his hands clean. The result was that the petition be dismissed and the respondent found duly elected; the petitioner to pay costs.

(9 *Journal Legis. Assem.*, 1875-6, p. 22.)

WEST ELGIN.

BEFORE CHIEF JUSTICE DRAPER.

TORONTO, 10th and 17th April, 1875.

JOHN CASCADEN, *Petitioner*, v. MALCOLM G. MUNROE,
Respondent.*Practice—Particulars for scrutiny—Tendered votes—Corrupt practices—
Ballots and counterfoils—7th General Rule in Election Cases.*

When the petition claimed the seat for the unsuccessful candidate on the grounds that (1) illegal votes and (2) improperly marked ballots were received in favor of the successful candidate; that (3) good votes and (4) properly marked ballots for the unsuccessful candidate were improperly refused; and that (5) the successful candidate and his agents were guilty of corrupt practices, and particulars of all such votes and ballots and corrupt practices were asked from the petitioner.

Held, 1. As to the illegal votes, that the 7th General Rule prescribed the particulars of objected votes to be given, and the time of filing and delivering the same, and a special order was not therefore necessary.

2. As to the improperly marked ballots and improperly rejected ballots, the petitioner not having information respecting them, could not be ordered to deliver particulars of the same.

3. Particulars were ordered of the names, address, abode and addition of persons having good votes, whose votes were improperly rejected at the polls; and particulars of the corrupt practices charged by the petitioner against the respondent and his agents.

Beal v. Smith, L. R. 4 C.P. 145 (*Westminster case*), followed.

The petition in this case contained the usual charges of corrupt practices; and alleged that illegal votes and improperly marked ballots had been received and counted in favor of the respondent; and that good votes and properly marked ballots in favor of his opponent had been rejected; and claimed the seat for the unsuccessful candidate.

After the petition was at issue, a summons was taken out by the respondent, calling for the particulars of the allegations in the petition. The summons asked for particulars (1) of the persons not qualified to vote who had voted for the respondent, and the grounds of their disqualification; (2) of the votes tendered for his opponent and rejected; (3) of the counterfoils and ballots for his opponent which had been improperly rejected; (4) of the counterfoils and ballots improperly received and counted

for the respondent ; and (5) of the corrupt practices charged against the respondent and his agents in the petition.

Mr. Hodgins, Q. C., for the petitioner, showed cause, and had no objection to the usual order as to corrupt practices; but he contended that as the 7th General Rule in Election Cases (31 Q.B. 227) provided for the delivery of particulars of objected votes, no special order was necessary. As to particulars respecting the ballots and counterfoils, the petitioner could not give the information asked, as all the ballots and counterfoils were in the custody of the officers of the House, sealed up; and the cases of *Stowe v. Joliffe*, L. R. 9 C. P. 446, and *Macartney v. Corry*, 21 W. R. 627, showed that the ballots in these election cases could only be inspected under a special order.

Mr. J. B. Read, *contra*, contended that it was the petitioner's duty to obtain an inspection of the ballots, and to furnish the information asked for; and if he did not do so, that he should be precluded from relief on that branch of the case.

DRAPER, C. J. A.—I have in this case to dispose of a summons which asks for a variety of particulars; and in order to dispose of the application, I shall take the subjects in the order in which they are raised in the petition and summons, premising that the petitioner (John Cascaden) seeks to avoid the election and return of Malcolm G. Munroe, and to have it declared that the unsuccessful candidate (Thomas Hodgins) was duly elected, and ought to have been returned.

1. The case is therefore clearly within the 7th General Rule, which provides that the party complaining of, and the party defending, the election and the return, shall within a given time deliver to the Clerk of the Crown, and also at the address (if any) given by the petitioner and the respondent (as the case may be), a list of the votes intended to be objected to, and of the heads of the objection to each such vote. I see no reason for a

special order in this case, or for varying from the terms of this Rule. So far I discharge the summons.

2. Particulars are asked for as to parties alleged in the petition to have had good votes, who intended to vote for the unsuccessful candidate, whose votes were tendered and improperly rejected. I think the respondent is entitled to their names, address, abode and addition, and I order accordingly.

3 & 4. Full particulars are asked of the number on the counterfoil of those ballots, marked, or so marked as to indicate votes, for the said Thomas Hodgins, improperly rejected, and not counted for him at the said election; and the number on the counterfoil of those ballots which were void, and should have been rejected by reason of their wanting the signature or initials of the Deputy Returning Officer, and the name of such returning officer; and of the number on the counterfoil of those parties voting for more candidates than one, and as having a writing or mark by which the voters could be identified, and as unmarked or void under the provisions of the Ballot Act, and specific reasons for those otherwise void, and the names, address, abode and addition of the parties using such ballots, and which ballots were improperly accepted and counted for the said Malcolm G. Munroe, as mentioned in the fourth clause of the petition.

I am bound to assume that the Returning Officer has done his duty, and therefore has, under the 20th section of the Ballot Act returned to the Clerk of the Crown in Chancery his return, and all the documents and papers enumerated in that section, among which are the counterfoils. It would be useless to make an order on the petitioner to furnish information which I have no reason to suppose he possesses. The same reason appears to me to apply to every item, or nearly so, in this branch of the summons. A reference to *Stowe v. Joliffe*, L. R. 9 C.P. 446, which was mentioned by Mr. Hodgins, would have probably prevented this part of this summons; which part I also discharge.

5. It is further asked that an order should issue for full particulars of (*a*) corrupt practices charged, (*b*) of bribery, (*c*) of treating, and (*d*) of the nature of the undue influence, and of the parties practising the same, all which are referred to in the tenth clause of the petition; and of the names, abode and addition of parties who before, at, and during the election offered to corrupt and bribe, or give or procure advantage to electors to induce them to vote for respondent, or to refrain from voting for the unsuccessful candidate; and the names, &c., of the persons sought to be corrupted, and the specific nature of such corruption, bribery and advantage, referred to in the seventh paragraph of the petition.

There was a very similar application in the case of *Beal v. Smith*, L. R. 4 C.P., 145, in which Willes, J., after consultation with Martin, B., and Blackburn, J., ordered that the petitioners should, three days before the day appointed for trial, leave with the Master, and also give the respondent and his agent, particulars in writing of all persons alleged to have been treated, and of all persons alleged to have been unduly influenced; and that no evidence should be given by the petitioners of any objection not specified in such particulars, except by leave of a Judge, upon such terms (if any) as to amendment, postponement, and payment of costs as might be ordered. That order was affirmed, on application to the Court of Common Pleas for the fuller particulars which Willes, J., had refused to order. I shall make a similar order on this branch of the summons, except that I shall, following the usual practice here, make the time fourteen days instead of three, and will in the same manner dispose of the application as to the matters charged in the paragraphs of the petition referred to.

WEST ELGIN.

BEFORE CHANCELLOR SPRAGGE.

ST. THOMAS, 24th June, 1875.

JOHN CASCADEN, *Petitioner*, v. MALCOLM G. MUNROE,
Respondent.

*Petition claiming the seat—Scrutiny of votes—Change of day of trial—
Withdrawal of respondent—Seat awarded to the unsuccessful candidate
at election—Certificate thereon to Speaker.*

Where a petition claims the seat for the unsuccessful candidate, a scrutiny of votes may be ordered to be taken in each municipality by the Registrar acting for the Judge on the *rota*.

The day appointed for the trial of an election petition may be altered to an earlier day by consent of the parties, and by an order of the Judge.

During the scrutiny of votes the respondent abandoned the seat to his opponent, after his opponent had secured a majority of 8 votes, and agreed that such should stand as his opponent's majority, and that the Court should declare such opponent duly elected; and the same was ordered by the Court.

The petition was as stated on p. 223.

The vote at the election was: for the respondent, 1,101; for Thomas Hodgins, 1,091; majority for respondent, 10.

A scrutiny of votes having been applied for on behalf of the petitioner, the Chancellor, being the Judge on the *rota* for the trial of this election petition, made an order on the 21st May, 1875, pursuant to the 36 Vic., c. 2, ss. 28-37, directing a scrutiny of votes in each of the municipalities of the electoral division. The scrutiny thereupon took place before the Registrar, and was conducted by the following counsel:

Mr. Davidson Black and Mr. J. H. Coyne for petitioner.
Mr. John McLean for respondent.

During the scrutiny, 18 votes for the respondent were held bad, and were struck off the respondent's poll, and the vote of one of the respondent's agents was held bad for corrupt practices. The respondent thereupon abandoned the defence of the seat to his opponent, the latter having secured on the scrutiny a majority of 8 votes. The trial had been appointed to take place at St. Thomas on the 28th June, 1875, but on a consent signed by both

parties the day was changed to the 24th June, on which day the Court was held in the Court House, St. Thomas.

Mr. Colin Macdougall and Mr. J. H. Coyne for petitioner.
Mr. John McLean for respondent.

The CHANCELLOR said that the trial of the election petition had been fixed for the 28th June, but as both parties had agreed to his taking it at an earlier day if it were found convenient, he had changed the day of trial to to-day. He had not been able to get the report of the scrutiny of votes from the Registrar, but he presumed counsel knew the nature of it and could state the result.

Mr. Macdougall, for the petitioner, said that the result of the scrutiny was to give Mr. Hodgins a majority of eight votes. The respondent had agreed to let that stand as Mr. Hodgins' majority, and that the Court should report that Mr. Hodgins was duly elected.

The petition was then read by the Registrar.

The CHANCELLOR asked if it was intended to prosecute the charges of corrupt practices against the respondent, or if there was a counter petition against Mr. Hodgins?

Mr. Macdougall said it was not intended to prosecute the charges against the respondent, and there was no counter petition.

Mr. McLean, for the respondent, then read the consent signed by the counsel for both parties, and stated that on hearing the evidence of one of the witnesses examined on the scrutiny of votes, he was convinced that the election of the respondent would be avoided; and not wishing to incur a very large expense, he, on behalf of the respondent, had proposed the settlement which was agreed to, and was embodied in the consent just read.

The CHANCELLOR then asked if any one else desired to continue the defence against the petition, in place of the respondent.

Mr. McLean said he did not know that any one else desired to continue the case, and he had no reason to suppose that any other person would continue it.

The CHANCELLOR then gave judgment, declaring that the respondent was not duly elected, and ought not to have been returned as member for West Elgin, and that *Mr. Hodgins* was duly elected, and ought to have been returned.

The following certificate of the result of the trial was transmitted by the learned Judge to the Speaker :

In pursuance of the Controverted Elections Act of 1871, I beg to certify to you, in relation to the election for the Electoral Division of the West Riding of the County of Elgin, holden on the eleventh and eighteenth days of January last past, that a petition was duly presented under the statutes against the return of *Malcolm G. Munroe*, Esquire, as member to represent the said Electoral Division in the Legislative Assembly for the Province of Ontario, and claiming the seat for *Thomas Hodgins*, Esquire, one of Her Majesty's Counsel learned in the law, the unsuccessful candidate at the said election.

That in consequence of the said petition being presented, it became necessary to enter into a scrutiny of the votes polled and tendered at the said election, and I thereupon, by order bearing date the twenty-first day of May last past (whereof a copy is hereto annexed), made provision for holding in every local municipality in the said Electoral Division a scrutiny of the votes polled and tendered in such municipality, and by such order appointed a day and place within each of the said municipalities respectively for entering into the scrutiny. And I did further, by said order, appoint my registrar, *Charles Allan Brough*, barrister-at-law, to act in my stead in the taking of said scrutiny.

That, as appears by the report of the said *Charles Allan Brough*, hereto annexed, the scrutiny of votes polled at

the said election was entered into before him, as directed by the said order, and on the conclusion of the scrutiny he determined that the said Thomas Hodgins had a majority of eight of the good and legal votes at the said election.

That the trial of the said petition came before me at the town of St. Thomas, in the county of Elgin, on Thursday, the twenty-fourth day of June last past.

That at the conclusion of the said trial, I determined that the election of the said Malcolm G. Munroe was void, and that the said Thomas Hodgins was duly elected at the said election. And I certify such determination to you, pursuant to the statute in that behalf.

That no evidence was given before me at the trial.

I append hereto a copy of the notes of evidence taken before the said Charles Allan Brough on the said scrutiny.

The learned Judge further reported that the following persons were proved to have been guilty of corrupt practices, viz.: (1) Duncan McKillop, (2) James Timewell, (3) John Livingstone.

(9 *Journal Legis. Assem.*, 1875-6, p. 18.)

WEST WELLINGTON.

BEFORE MR. JUSTICE GWYNNE.

*Guelph, 25th and 26th June, 1876.*GEORGE MOORE, *Petitioner*, v. JOHN MCGOWAN, *Respondent*.*Agent furnishing drink at meeting of electors—32 Vic., c. 21, s. 61; 36 Vic., c. 2, s. 1—Costs occasioned by conduct of Election Agent—Corrupt practices by tavern keepers.*

One F., an agent of the respondent, brought a jar of whiskey to a meeting of electors assembled for the purpose of promoting the election, and gave drinks from the same to the electors present, which was held a corrupt practice, and a violation of the Election Law of 1868, as amended by the Election Act of 1873, so that the election was avoided thereby.

The costs of investigating charges of bribery against the respondent's election agent, though not established, were awarded against the respondent, owing to the equivocal conduct of his agent in the matters which led to the charges; also the costs of other charges of bribery which were not established, and the costs of proving that several tavern keepers, for their own profit, had violated s. 66 of the Election Law of 1868, as the witnesses who gave evidence of these matters also gave evidence of other matters, as to which it was reasonable they should have been subpoenaed.

The petition contained the usual charges of corrupt practices.

The candidates at the election were the Respondent and Robert McKim.

Mr. Hodgins, Q.C., and Mr. Guthrie for petitioner.

Mr. Robinson, Q.C., and Mr. Drew, Q.C., for respondent.

The evidence on which the election was avoided was as follows:

Thomas McAllister; I live in the Kerry settlement. I was at a meeting held in the school-house during the election, called by Mr. Fahey. It was a meeting of the electors. The school-house was pretty full. It was about a week before the polling day, or the week before. The polling day was on Monday. Mr. Fahey addressed the meeting on behalf of Mr. McGowan. There was some whiskey going at the meeting; Mr. Fahey brought it there. He told us it was his whiskey. It was served out to the people attending the meeting. I got some.

The whiskey was served out before he commenced to address the meeting. The people who drank stayed for the meeting. The whiskey was in a jar. It held, I should say, by appearance, a gallon or more. There were thirty or forty at the meeting.

Edmund Jeremiah O'Callaghan: I live in the West Riding of Wellington, and am an elector. I took Mr. McKim's part actively. I attended meetings and spoke for him. Mr. Fahey attended meetings and spoke for Mr. McGowan; also Dr. Orton; also, I think, Mr. Barrett attended one meeting. I was at the meeting in Kerry settlement, held at Rocky Mountain. The bills advertised that the meetings were to be addressed by Mr. Fahey and Dr. Orton. There were two meetings at the Kerry settlement. I think Fahey was late for the first, and did not attend, and a second was called specially to hear him. The last was the one at which the whiskey was. I cannot say who brought it. Several asked Fahey if he had whiskey. He went to the door to look after it. The cutter in which it was had gone. He asked then for some persons to go after it. Some boys were sent for it. It was brought back, and Fahey poured it out and gave it to the parties there. There were from thirty to forty people there. Fahey kept pouring out until all was drunk. It was immediately before the meeting commenced that the whiskey was handed round. It was a public meeting of the electors in relation to the election. I went there for the purpose of replying to Mr. Fahey, and did so. The neighborhood was chiefly against Mr. McGowan.

Cross-examined: I did not drink any whiskey myself. I have not drunk whiskey for thirty years. I have drunk beer probably at meetings held during the election. Was asked by several if I had had any whiskey. I said no, but I thought Mr. Fahey might have some, and I asked him. It never entered my mind at the time whether he was an agent of Mr. McGowan or not. I did not think the law was so stringent as it appears to be.

James Fahey: I addressed some meetings for Mr. McGowan. I addressed a meeting in the township of Arthur. I heard it stated here that whiskey was brought by me to the meeting. I had nothing to do with it, but that it came in the same sleigh with me. Mr. Charles Biggar drove me. He had charge of the sleigh. I got out of the cutter at the school-house. The horse and cutter were sent up to Mr. Cornelius O'Dowd's stables. The whiskey was in the cutter when it was sent there, about a quarter of a mile from the school-house. I had no intention that whiskey should come to the school-house. When we were leaving Mount Forest where we were, Biggar put the whiskey in the sleigh. I never thought more of it until we got to the school-house; there was quite a crowd there. Mr. O'Callaghan and Mr. Milloy asked me if I had any whiskey, or if we would not treat. I said, of course, you never knew an Irishman that would not treat. I said that there was some in the cutter, but it had gone away, and that if they had a mind to send for it they could. Somebody went for it; I did not send. Biggar was present when this was said. The whiskey was brought down; some boys brought it in. I said to O'Callaghan and Milloy, now if you want a drink, here it is; Milloy took a drink; I took one myself; O'Callaghan put it to his lips but did not drink. I thought then that it was a trap, and I said, I hope this is not against the law. O'Callaghan laughed, and said he thought not, and even if it was, nothing would be said about it. If I had thought it was against the law, I would not have had anything to do with it. The whiskey then went round, and it went but a short way.

Mr. Robinson, at this stage of the case, said that he was satisfied that upon the evidence of Mr. Fahey the election must be avoided; for that no doubt Mr. Fahey was an agent, and his acts as to treating at meetings could not be justified. He therefore asked whether the petitioners insisted still upon the personal charges?

Mr. Hodgins said that so far as the petitioner was concerned he had no desire to press the personal charges, and would leave the case as to them to the Court without argument.

GWYNNE, J.—I determine the election of the respondent to be null and void by reason of corrupt practices, in this, that James Fahey, an agent of the said respondent for promoting the said election, in violation of the 61st section of the Election Law of 1868, as amended by the Election Act of 1873, did provide and furnish drinks to a meeting of electors assembled for the purpose of promoting the said election.

I should not have allowed to the petitioner the costs attending the charges of bribery (which were not established), and also the costs incidental to the proving certain tavern keepers guilty of having for their own profit sold liquor within polling hours on the polling day, but for the following reasons. Two of the charges of bribery were attempted to be established by the evidence of the respondent's financial agent; who, while his evidence showed that in the matter complained of there was no just imputation of any charge of bribery, certainly showed very equivocal conduct of his own in the matter, attributable either to gross ignorance on his part, or to a graver charge of want of fidelity to his employer and to the trust he had assumed. I regret very much that the law as it at present stands does not enable the Court, as it does in the case of election to the House of Commons, to make the agent pay himself all the costs of this vain inquiry which his own very equivocal conduct gave occasion for. As between the petitioner and the respondent, the latter must bear the costs incidental to an inquiry which the ignorance and misconduct of his own agent, although not criminal, has occasioned. As to the other charges of bribery, which also were failed to be established, and as to the costs attending proving the tavern keepers to have violated the 66th section of the

Act of 1868, which it was proved they did for their own profit, with which the respondent had nothing to do, I cannot separate these from the general costs, because, upon a careful reperusal of the evidence, I find that the several witnesses who spoke to these points also spoke to other points as to which it was reasonable they should have been subpoenaed.

In certifying the result of the trial to the Speaker, the learned Judge also reported that the following persons, being tavern keepers, were proved to have been guilty respectively of corrupt practices, namely, in keeping their taverns open, and selling therein spirituous and fermented liquors in violation of the 66th section of the Election Law of 1868, namely, Robert Ramsay, Daniel Sheehy, Carleton Calvin Green, Theodore Zass, William Kirby; and, further, that James Fahey was proved to have been guilty of corrupt practices, in violation of the 61st section of the same Act, as amended by the Election Act of 1873.

(9 *Journal Legis. Assem.*, 1875-6, p. 9.)

SOUTH ESSEX.

BEFORE CHANCELLOR SPRAGGE.

SANDWICH, 6th to 10th and 13th July, 1875.

SAMUEL MCGEE, *Petitioner*, v. LEWIS WIGLE, *Respondent*.

Agent accepting a treat in a tavern during polling hours—Corrupt Practice—Costs.

On the day of the election, and during the hours of polling, one W., an agent of the respondent, was offered a treat in a tavern within one of the polling divisions, of which such agent and others then partook.

Held, that giving a treat in a tavern during polling hours was a corrupt practice, and being an act participated in by an agent of the respondent, the election was avoided.

The petitioner was declared entitled to the general costs of the inquiry, and the costs of the evidence incurred in proof of the facts upon which the election was avoided; but the costs incurred in respect of charges which the petitioner failed to prove were disallowed.

The petition contained the usual charges of corrupt practices.

Mr. Alexander Cameron for petitioner.

Mr. Horne and Mr. S. White for respondent.

The material facts of the case on which the election was held void are set out in the following evidence :

James McQueen : I know Alfred Wigle ; I saw him in both taverns at Ruthven on polling day. He treated five or six persons on polling day. It was at Taylor's ; Alfred Wigle and I had a drink or two afterwards ; it was while the polling was going on ; it was in Lovelace's sitting-room. There were five or six of us together. I treated once ; I am not sure whether Alfred Wigle treated at Lovelace's ; he drank. There are only the two taverns at Ruthven. I saw Alfred Wigle several times in the taverns during polling hours. Went to Taylor's about 9, about the time of the opening of the poll ; went to Lovelace's about noon.

Alfred Wigle : I heard James McQueen's evidence. I saw him on polling day. I treated him on polling day ; it was pretty early ; I don't know whether it was before or after the opening of the poll. It was pretty early, and before the opening of the poll, I think.

Cross-examined : When McQueen proposed to drink we went to Taylor's and sat in the sitting-room. The reason, I think, the polls were not open is that it was early in the morning, and I had just come up town. I went to Lovelace's hotel in the middle of the day, and had a drink. I and McQueen tossed up for the treat ; he lost, and we went in and had a drink. There were five or six of us. I was bringing up voters to the poll during the day. I used my own horse and cutter in bringing voters to the poll. I took a pretty active part in the election ever since my brother came out. We formed a little committee at Ruthven to work up the locality. I got a voters' list and marked off names. I did not canvass, unless people came to the store. I saw respondent twice during the election, and told him I thought we could give him pretty good support. I told Dr. Allworth (respondent's

election agent) we could give pretty good support where we were. I appointed Henry Smith as scrutineer for respondent, and got him to act as such on the polling day. [The other evidence as to agency is omitted.]

SPRAGGE, C.—At the close of the argument on Saturday last I gave my views upon the several points of law and of fact presented in the case.

One point only I did not decide finally, viz., whether the partaking by Alfred Wigle, whom I find to be an agent of the respondent, of a treat given by James McQueen, during polling hours, in Lovelace's tavern, was a corrupt act within the statute, which would avoid the election. I could see no escape from the conclusion that this act, prohibited by the 66th sec. of the Act 32 Vic., cap. 21, and declared to be, being within polling hours, a corrupt act by 36 Vic., cap. 2, s. 1, and being an act participated in by one for whose acts the respondent was responsible, must avoid the election.

I have since had an opportunity of conferring with three of the other Judges, and they all concur in the view which I expressed at the conclusion of the argument. The result is, that I must declare the election void by reason of the corrupt practice by an agent.

As to costs, I think the petitioner is entitled to the general costs of the inquiry; but the costs have been greatly increased by the calling of witnesses on charges which the petitioners have failed to prove; and the costs, so far as they have been so increased, are to be disallowed. No costs are to be taxed in respect to the evidence, except such as have been incurred by proof of the fact upon which my judgment proceeds.

In the searching and protracted inquiry which has been had before me, I find no personal wrong proved against the respondent. The expenses of the election have been very moderate, and the evidence leads me to believe that the respondent desired and endeavored that the election should be a pure one.

With his certificate to the Speaker of the result of the trial, the learned Judge reported that Alfred Wigle and James McQueen were proved to have been guilty of corrupt practices at the election.

(9 *Journal Legis. Assem.*, 1875-6, p. 11.)

SOUTH OXFORD.

BEFORE CHIEF JUSTICE DRAPER.

TORONTO, 10th April, 1875.

BENJAMIN HOPKINS, *Petitioner*, v. ADAM OLIVER, *Respondent*.

Agent of respondent cannot be made a party to petition—34 Vic., cap. 3, sec. 49—“Person other than the candidate.”—Form of Petition.

The petition, besides charging the respondent with various corrupt acts, charged one of his agents with similar acts, and claimed that the agent was subject to the same disqualifications and penalties as a candidate. The prayer of the petition asked that this agent might be made a party to the petition, and that he might be subjected to such disqualifications and penalties.

- Held*, 1. That there is no authority in the Election Acts or elsewhere, for making an agent of a candidate a respondent in a petition on a charge of personal misconduct on his part.
2. There is no authority given to the Election Court or the Judge on the *rota* to subject a person “other than a candidate” to such disqualifications.
3. The Judge’s report to the Speaker as to those persons “other than the candidate,” who have been proved guilty of corrupt practices, is not conclusive, so as to bring them within 34 Vic., cap. 3, sec. 49, and so render them liable to penal consequences.

The 6th General Rule in Election Cases does not preclude the statement of evidence in the petition; it renders it unnecessary, and is intended to discourage such pleading.

The petition contained the usual charges of corrupt practices, and in paragraph 3 charged that the respondent was, by himself and others on his behalf, guilty of bribery, treating and undue influence, which are corrupt practices; and (paragraph 4) of procuring divers persons knowingly to personate and assume to vote at the election in the names of other persons who were voters; and (paragraph 5) providing drink and entertainment at his (respondent’s) expense at meetings of electors; and (paragraph 6) of keeping open divers hotels, taverns and shops where spirituous and fermented liquors were ordinarily sold, and

of selling and giving such liquors to divers persons corruptly to influence them. Other general charges were also made.

The 17th paragraph stated that Peter Johnson Brown was an agent for the respondent, before, during, at and subsequent to the election, in furthering the same, and was guilty by himself of each and all of the said corrupt practices ; and petitioner submits that the vote of Brown for the said respondent was therefore null and void, and he thereby became incapable of being elected to and of sitting in the Legislative Assembly, and of being registered as a voter and of voting at any election, and of holding any office at the nomination of the Crown or the Lieutenant-Governor, or any municipal office.

The second paragraph of the prayer of the petition asked that Brown should be made a party to this proceeding in respect of the said charges so made against him, to the end that he might have an opportunity of being heard, and that his said vote might be declared null and void, and he be declared incapable in the several particulars hereinbefore mentioned.

The petition contained no direct allegation that Brown voted at this election, though it was submitted that the vote of Brown for the respondent was null and void.

A summons having been granted to set aside the 17th paragraph of the petition and 2nd paragraph of prayer,

Mr. F. Osler showed cause.

Mr. Hoyles supported the summons.

DRAPER, C. J. A.—I presume *Mr. Hoyles* represented the respondent, and therefore that the summons is to be treated as issued on his application. He rested principally on the absence of any authority given by the statute to make an elector, not having been a candidate, a party called upon to answer a petition filed and prosecuted to avoid the election of the candidate actually returned. He also objected to the 17th paragraph, that, as against him,

it was a mere statement of evidence, and was contrary to the spirit of the 6th General Rule made in the Court of Queen's Bench and adopted in this court.

On the other hand, Mr. Osler urged that by making the accused elector a party, it gave him the opportunity of being heard in his own defence, and of rebutting the charges before the Judge who would try the issues on the petition, on which trial the inquiry would be pertinent to the charge of corrupt practices. He also put in an affidavit to show that the charge was not wantonly made, and invited particular attention to the fact, that the petition alleged that Brown was an agent for the respondent as well as an elector.

The Act, 34 Vic., c. 3, makes no provision for this particular matter, though it does provide (s. 27) that two or more candidates may be made respondents to the same petition; and (s. 28) recognizes that more than one petition may be presented against the same election and return. But there is no analogy between those provisions and this case. The contest to which they relate is for the seat in the House: whereas as to Brown, he is to be made a party only that he may be liable to penalties.

I fear great inconvenience would arise, if the agents of a successful candidate could be made defendants to an accusation of personal misconduct in an election, upon a petition, the leading object of which was to unseat the sitting member. The Legislature has not, at least directly, provided for it—none of the general rules meet it—and this omission seems to me to require the exercise of legislative power in order to supply it. It would be an addition to the powers which the statute gives, not a matter of procedure merely in the exercise of powers given.

The allegation in the 17th paragraph—unless as a proceeding against Brown—would infringe on the spirit if not the letter of the 6th General Rule, because under a general charge of corrupt practices, specific details need not, I apprehend, be given until an order for particulars

is made ; but the rule does not preclude the statement of such evidence, it renders it unnecessary, and so far was no doubt designed to discourage such a practice. If Brown is properly made a party, I think he would have a right to such an order under this rule. I have looked at the Imperial Statute 31-32 Vic., c. 125, from the 45th section of which this of ours seems to have been copied, but that Act refers to preceding statutes in force in England, under which proceedings might be instituted.

Under our statute (34 Vic., c. 3, s. 16) the Judge is required to *determine* whether the member whose election or return is complained of, or any and what other person was thereby returned or elected, or whether the election was void, and shall forthwith certify in writing such determination to the Speaker, appending thereto a copy of his notes of the evidence ; and upon such certificate being given, *such determination shall be final to all intents and purposes.*

But the Judge is (s. 17), when a corrupt practice is charged, in addition to this certificate, at the same time to *report* in writing to the Speaker, among other things, "the names of any persons who have been proved at the trial to have been guilty of any corrupt practices."

The case of *Stevens v. Millett*, L. R. 6 C. P. 147, which was not referred to on the argument, points out very clearly the distinction between a "determination" and a "report," and our own statute so closely resembles the English Act 31-32 Vic., c. 125, that this decision is applicable in many particulars to the present case. It is the Judge's duty to report, but it is not said his report is to be final. The 49th section of our statute enacts that "any person other than a candidate found guilty of any corrupt practice in any proceeding in which he has had an opportunity of being heard," shall incur certain penal consequences. Now, if the Legislature had intended that the Judge who tried the issues raised upon the election petition, and relating to the validity of the election and return, should at the same time hear and determine a

charge of corrupt practices against one who had, as an elector or agent, taken part in the election, it is, I think, reasonable to expect that it would have distinctly said so. It is obvious that the Act was framed upon the English statute. The 49th section of our Act is substantially, though not in every detail, a copy of the 45th section of the English statute, which, however, by section 15, gives a certain effect to the report of the Judge as respects persons guilty of corrupt practices for the purpose of the prosecution of such persons, referring to another English statute (26 Vic., c. 29); but that portion of the Judge's report does not affect the disqualification; it is the foundation of another proceeding. It does not seem to have occurred to the framers of our Act that it was necessary to provide for some "proceeding in which, after notice of the charge," the person inculpated by the Judge's report may have an "opportunity of being heard;" and while making use of section 45, they did not remember or refer to section 16 of the English statute; and thus, as appears to me, the mode of subjecting a party to the penal consequences of the 49th section has not been provided. It may be as well, however, to invite attention to the fact that our enactment applies to persons guilty of any corrupt practices. The English Act (section 45) extends only to those found guilty of bribery.

In my opinion the power of adjudging a person "other than a candidate" guilty of corrupt practices so as to subject him to the disqualifications enumerated, is not conferred either upon the Election Court or the Judge on the *rota*; and that the Judge's report of "the names of any persons who have been proved at the trial to have been guilty of any corrupt practice" is not final and conclusive, so as to bring such persons within the operation of the 49th section as found guilty, and therefore subject to the penal consequence.

I think, therefore, an order should issue to strike out the 17th paragraph, and the concluding paragraph of the prayer of the petition.

I understand the application is made on behalf of the respondent, and not of Brown. If it were on behalf of the latter, I should give him his costs, as no objection was made to his being heard. If of the respondent, the point being new, I will give no costs.

SOUTH OXFORD.

BEFORE CHIEF JUSTICE DRAPER.

WOODSTOCK, 13th to 15th July, 1875.

BENJAMIN HOPKINS, *Petitioner*, v. ADAM OLIVER, *Respondent*.

Production of telegrams—Evidence respecting charges not in particulars—Excluding Respondent's Attorney from court.

The Court ordered the agent of a telegraph company to produce all telegrams sent by the respondent and his alleged agent during the election, reserving to the respondent the right to move the Court of Appeal on the point; the responsibility as to consequences, if it were wrong so to order, to rest on the petitioner.

A witness called on a charge in the particulars of giving spirituous liquors in a certain tavern on polling day, during polling hours, cannot be asked if he got liquor during polling hours in other taverns.

The attorney for the respondent may be ordered out of court when a witness is being examined on a charge of a corrupt bargain for his withdrawal from the election contest, when the evidence of such witness may refer to the sayings and doings of such attorney in respect of such withdrawal.

The statements in the petition appear on p. 238.

Mr. R. A. Harrison, Q.C., and Mr. H. B. Beard for petitioner.

Mr. Bethune and Mr. F. R. Ball for respondent.

During the trial the following points were decided:

An agent of a telegraph company was subpœnaed to produce certain telegrams in the custody of the telegraph company.

David Flook: I am in the Montreal Telegraph Company's employment at Ingersoll. The respondent and Peter J. Brown sent messages through the office during the election. The messages are in existence now. I object to produce them. I am instructed not to produce them.

After the argument of counsel,

DRAPER, C. J. A., said: I admit the right to call for the telegrams, reserving, as a question of law, whether the petitioner has a legal right to demand them, the responsibility as to any and all consequences, if it be wrong, to rest on the petitioner. The respondent having leave reserved to move the Court of Appeal on the point, I direct their production.

A witness was called to prove that spirituous liquors were given during the polling hours at Brady's tavern, in Ingersoll. During his examination,

Mr. Harrison asked the witness: In what taverns in Ingersoll, other than Brady's, did you get liquor on polling day, during polling hours?

Mr. Bethune objected. Brady's tavern is the only tavern in Ingersoll mentioned in the particulars, and therefore the question should not be allowed.

DRAPER, C. J. A.—I sustain the objection.

A paragraph in the petition charged that one James A. Devlin, who had been a candidate at the election, was induced by a corrupt bargain to retire from the contest. During his examination, Devlin stated that he had been asked to see Mr. P. J. Brown and another as to his withdrawal.

Mr. Harrison then applied that Mr. P. J. Brown should be ordered to withdraw while the witness was giving his evidence.

Mr. Bethune objected, as Mr. Brown was the attorney for the respondent, and his presence was necessary to assist counsel in the proceedings.

DRAPER, C. J. A.—I direct Mr. Brown's withdrawal while this witness is examined as to Mr. Brown's sayings and doings in relation to paragraph 8 of the petition

After a number of witnesses had been examined, it was agreed by the counsel for both parties that the election should be declared void on account of corrupt practices by one William McMurray, an agent of the respondent, in giving spirituous and fermented liquors at his tavern, in the town of Ingersoll, on the polling day, during the hours appointed for polling, in violation of section 66 of the Election Law of 1868.

The CHIEF JUSTICE certified accordingly, and reported that William McMurray was proven to have been guilty of corrupt practices at the said election.

(9 *Journal Legis. Assem.*, 1875-6, p. 10.)

EAST PETERBORO.

BEFORE CHIEF JUSTICE DRAPER.

PETERBORO, 26th to 28th July, and 2nd August, 1875.

JAMES STRATTON, *Petitioner*, v. JOHN O'SULLIVAN,
Respondent.

Acts of agency—Respondent's Agent partaking of liquor during polling hours not a corrupt practice—Meeting of electors—Treating by Respondent's Agent—36 Vic., c. 2, s. 2—Law of agency.

A witness stated that he had asked the people in his neighborhood to vote for the respondent, had attended a meeting of the respondent's friends, and made arrangements for bringing up voters on polling day, and had a team out on polling day.

Held, that the evidence of his being an agent of the respondent was not sufficient.

One B. was appointed, in writing, by the respondent to act as his agent for polling day. During the day he went to a tavern and asked for and was given a glass of beer.

Held, that B. treated himself, and neither gave nor sold, and was not therefore guilty of a corrupt practice.

One C. accompanied the respondent when going to a public meeting, and canvassed at some houses. On the journey, the respondent cautioned C. not to treat, nor do anything to compromise him or avoid the election. The respondent's election agent paid for C.'s meals at the place where the meeting was held.

Held, that the evidence showed that the respondent had availed himself of C.'s services, and was therefore responsible for his acts.

Agency in election matters is a result of law to be drawn from the facts of the case, and the acts of the individuals.

A meeting of the electors was held in a town hall, and C. (the agent above named) and a number of electors went from the meeting to a tavern, where they were treated by C.

Held, 1. That this was a meeting of electors assembled for the purpose of promoting the election ; and,

2. That the treating by C. was a corrupt practice, and a breach of the 61st s. of 32 Vic., c. 21, as amended by 2nd s. of 36 Vic., c. 2.

The petition contained the usual charges of corrupt practices.

Mr. Bethune and Mr. D. W. Dumble for petitioner.

Mr. Hector Cameron, Q.C., and Mr. Burnham for respondent.

In addition to what is set out in the judgment, the following evidence was given :

Francis Birdsall: I live in Asphodel. I asked people in my neighborhood to vote for Dr. O'Sullivan. There was a meeting at Westwood—not a public meeting—of the friends of Dr. O'Sullivan. We talked over the election ; made arrangements for bringing up voters on polling day. John Breakenridge and Charles O'Reilly were the agents for O'Sullivan at this election. I had a team out on polling day. Treated myself and four or five others at Westwood on polling day ; I paid. I had brandy and sugar ; the landlord, Galbraith, brought in the liquor. I was cold, and had driven 35 miles. I told the landlord that if he would not bring the liquor, I would get it myself, and he then gave it. One of the others said he had voted, and it would do no harm to treat him.

Garry Galbraith: I keep a tavern at Westwood. My tavern was closed on polling day. Francis Birdsall came and insisted on having something, and he gave something to four or five who came with him, who said they had voted. John Breakenridge may have drank, but I am not sure I gave him any. I think Breakenridge was at my place about noon. He was there again during the evening.

John Breakenridge: I took part in favor of respondent. I was at Norwood when Dr. O'Sullivan was there at a public meeting. I was also at a private meeting at Bishop's

hotel; a meeting of respondent's central committee; 20 or 30 persons were present; respondent was not there. I was secretary; I had no regular appointment. At that meeting I was appointed as agent for the respondent for polling day, but respondent himself appointed me. [Appointment put in.] I got this from the respondent's brother. Mr. O'Reilly was also named at my request. I did no treating on polling day. I was in Galbraith's tavern. I treated myself; I got a glass of beer; I asked for it in the kitchen, and got it in another room, not the bar. Francis Birdsall came with me. I paid for no drinks for any person that day.

After the argument of counsel as to the agency of Francis Birdsall, and the purchase of liquor by John Breakenridge at Galbraith's tavern, Westwood, during polling hours on polling day,

DRAPER, C. J. A., said: I think the evidence of Birdsall's agency insufficient. As to the purchase by Breakenridge of liquor in Galbraith's tavern, it was a glass of beer to which he treated himself; he neither gave nor sold. I find for the respondent on these charges.

The facts on which the election was avoided are sufficiently set out in the judgment.

DRAPER, C. J. A.—It is very satisfactory to me to be able to find that there is no evidence whatever in this case which impugns the personal conduct or character of the respondent. I find not only that he is free from the imputation of any forbidden practice in the course of this election, but that he has endeavored, by earnest advice and caution, to restrain his friends and supporters from doing anything which would enable his opponents to neutralize the success to which he aspired, and render the election in which he confidently anticipated success being open to question through the indiscretion or recklessness of any of them. Unfortunately, his advice was disregarded; the

law forbidding the practice of treating and keeping the taverns open during the hours of polling, has been wantonly violated, and the principal matter of inquiry is whether any of the leading culprits in these offences are so far identified with the respondent as in point of law to constitute them his agents, and to render him responsible for their illegal acts.

There was a meeting of the electors at Apsley about a week before the polling day. It had been publicly advertised. The respondent, the petitioner and Major Boulton all spoke at it. The respondent had engaged a sleigh, and one Timothy Cavanagh and Major Boulton accompanied him to this meeting. They drove first to Holmes's tavern. After the meeting the respondent and Cavanagh returned to Holmes's. The respondent retired almost directly for the night. A number of those electors who attended the meeting went also to Holmes's. Cavanagh treated the people; Holmes says he told him to give the people liquor, and Cavanagh says he treated many times, and that one Boyd—a supporter of Stratton's, the opposing candidate—did so likewise. This continued, as Cavanagh states, from 10 p.m. to 2 a.m. the next morning. The facts are relied upon to show a violation of the 61st section of the Election Law of 1868, by Cavanagh, at the expense of the respondent, or at his own expense, in providing and furnishing drink to a meeting of electors assembled for the purpose of promoting such election. If this be proved, then the question arises, was Cavanagh the agent for respondent? For if he was, then the latter is answerable for his acts and corrupt practices, though, as in this case, he not only did not authorize them, but actually, and in sincerity, endeavored to prevent them.

Agency does not necessarily require to be proven by an actual appointment, verbal or written, by the candidate. "It is a result of law to be drawn from the facts of the case, and from the acts of the individuals." Every instance in which, with the knowledge of the candidate or his employed agent, say his expense agent, a person acts at

all in furthering the election for him, or in trying to get votes for him, tends to prove that the person so acting was authorized to act as his agent. A repetition of such acts strengthens the conclusion. I found these conclusions upon authorities in the mother country, using to a great extent their very words, but not simply quoting them.

To apply them to this case. Cavanagh, at his own request, which I do not doubt, and for certain personal motives which he asserts,—but to which (excepting his gratitude to the doctor for his professional services) I give but slight credit,—accompanies the candidate on a journey, which had for one object to attend a public meeting in reference to the election at Apsley, and for another to canvass voters in a particular section of the county. It was intended that Mr. Carnegie, one of the respondent's authorized agents, should have gone with him. He did not go, and Cavanagh's request that he should be taken was complied with, though Mr. Carnegie says he had no desire to take him. Cavanagh says he was acquainted with people on the Burleigh Road, and that he did not canvass *the whole* of the Burleigh Road; that on this journey he canvassed at some houses, and perhaps canvassed some voters whom they met on the road, and *may* have introduced some voters to respondent. The very first witness called in this case was one of them. On their journey, Cavanagh states, the respondent, knowing his habits (if I remember rightly, he used some such expression as "*He was an awful fellow for treating*"), cautioned him to do nothing which would spoil his election—a caution which strengthens the assumption that the respondent counted on Cavanagh's assistance and exertions. Major Boulton, who also went with the respondent and Cavanagh, heard the former tell Cavanagh not to treat nor do anything to compromise him or avoid the election—a charge which points to the employment of Cavanagh for some work or duty in which his acts would be deemed acts done under the implied authority of the respondent. Again, on the day after this meeting,

Mr. John McDonald, who appeared to me to be a very respectable witness, saw Cavanagh and the respondent together, and took Cavanagh on one side and asked him whether he had done anything towards enabling parties to get liquor on the election day, and received his assurance that he had not. He also said he knew Cavanagh many years, and had heard of his character as to being free handed in treating, and busy in elections. Then Cavanagh goes to a meeting in Otonabee in a cutter which he hired, but does not know whether he paid for it, or whether it was charged to respondent. The respondent's authorized agent paid for the meals which Cavanagh got, and which Holmes had charged against him in an account dated in February, 1875, but relating to Cavanagh's being at Holmes's on the 13th January preceding. All these circumstances, taken separately, may, or at least some may, be deemed trifling and unimportant, but combined they acquire weight and substance; and substantiated by parties none of whom are hostile to the respondent, they appear to me to furnish strong evidence of agency. I am alive to the danger, as well as to the apparent hardship, of fixing the respondent with liability for acts done by another as his agent, which other, if the question had been directly put to him, he would not have employed in that character. There was obvious misgiving on the respondent's part, and apparently still greater on Carnegie's, but I think they resolved to incur the risk, and, without any formal appointment, the respondent availed himself of his services, and *quoad* the election, became responsible for his acts.

Assuming the agency to be established, I go back to inquire into the acts of Cavanagh in treating at Holmes's after this meeting of the electors. His own statement may suffice as to this: "I was at the Apsley meeting, and afterwards went to Holmes's tavern. Boyd and I treated alternately, turn about; I treated from about ten at night till two in the morning; can't tell how many times; I paid for each drink as it was taken."

I think this is a breach of the 2nd sec. of 36 Vic., c. 2, which repeals sec. 61 of the Election Law of 1868. The only question that can arise is whether this drink was furnished to a "meeting of electors assembled for the purpose of promoting such election previous to or during such election." The meeting was certainly not convened at Holmes's tavern, but at a town hall not far from it; and Cavanagh, Boyd, and a number of electors went from that meeting to Holmes's. It is not open to question that the meeting was assembled for the purpose of promoting such election, unless the statute is to receive the narrower construction that a meeting of the supporters of only one candidate is meant, and the promotion of the election means only the promotion of election of that candidate. I do not doubt that such a case would be within the Act, and the evidence on the present trial is by no means conclusive against this being precisely that case. Still I am of opinion the wider construction is no more than what the Legislature intended. If the meeting consists of electors of different parties, and it is held with the view of promoting an election, it must necessarily be an election of a representative for the whole constituency, to whatever party he may belong. Unless the larger construction prevail, a general meeting of electors, held only for the purpose of selecting a candidate, would not be within its provisions, and the providing and furnishing drink or other entertainment to the electors present would not be prohibited. I do not agree in such an interpretation. Another difficulty has been suggested, namely, that the treating did not take place in the building within the meeting assembled, and that the meeting was in fact over. A similar question arose in the *North Wentworth case* (*post*). I there held that where a meeting had been held for the promotion of an election, and after the transaction of their business they had gone generally together to a neighboring tavern on the invitation of the candidate on whose behalf the meeting was held, who there furnished or provided drink or other entertainment for them, it was

within the statute. I have been given to understand that a similar construction was adopted in another case. I have seen no reason hitherto to change my opinion, and adhering to it, I am under the necessity of finding that this was a corrupt practice committed by an agent of the respondent, though without his actual knowledge and consent, and that the election and return are void.

The result is, I find for the petitioner on the first charge relied upon by Mr. Bethune. I give no judgment on the charge of treating by Cavanagh at Smith's tavern at Indian River, as it was not included in the particulars, and I find for the respondent on the other charges.

(9 *Journal Legis. Assem.*, 1875-6, p. 10.)

NORTH VICTORIA.

BEFORE CHIEF JUSTICE DRAPER.

LINDSAY, 4th to 7th, 18th and 19th August, 1875.

DUNCAN MCRAE, *Petitioner*, v. JOHN DAVID SMITH,
Respondent.

Practice—Particulars—Evidence of bribery and of agency—Entertainment at a meeting of electors—Hiring teams on polling day—Agent treating during polling hours—Case not in Particulars—Recriminatory case.

Where particulars were delivered after the time limited by the order for particulars, and not returned, an application made at the trial to set them aside was refused; such application should have been made in Chambers before the trial.

Particulars of recriminatory charges delivered after the time limited by the order for such particulars were allowed, but the petitioner was allowed to apply for time to answer the charges therein contained, and was given such costs as had been occasioned by the granting of the application.

Where evidence of an act of keeping open his tavern on polling day, and selling liquor therein as usual, by P., an agent of the petitioner, came out on cross-examination, and during the argument the evidence was objected to because the charge was not in the particulars, the case was not considered.

The evidence respecting a charge of bribery, by payment of a disputed debt, was held insufficient to sustain the charge.

After a meeting of electors in a town hall, some friends of the respondent remained together consulting about the election, and afterwards went to a tavern, where some of them boarded, and had an oyster supper.

Held, that the evidence was not sufficient to sustain the charge that this was entertainment furnished to a meeting of electors under s. 61 of 32 Vic., c. 21, as amended by 36 Vic., c. 2, s. 2.

On polling day, one W. asked two voters to go with him and vote for the respondent, and he would bring them back, and they could feed their horses and have dinner. W. sent one of his horses on some of his own business, and hired from one of the voters a horse, for which W. paid him 50c., and then drove with the two voters to the poll.

Held, not a hiring of a horse, etc., to carry voters to the poll within s. 71, nor a furnishing of entertainment to induce voters to vote for the respondent, within s. 61 of the Election Law of 1868.

An offer by an agent of the respondent when canvassing a voter, that he "would see him another time and things would be made right," is not an offer of bribery.

An agent of the respondent, while canvassing a voter, gave \$8 to the widowed sister of the voter, an old friend of his, who was then in reduced circumstances. The agent stated that this was not the first money so given, and that it was in no way connected with the election.

Held, under the circumstances, not an act of bribery.

One M., an agent of the respondent, treated at a tavern during polling hours on polling day. The evidence was, that decanters were put down, and people helped themselves, but there was no evidence that spirituous liquors were used. The evidence was objected to at the time, as the charge was not mentioned in the particulars, but admitted subject to the objection.

Held, 1. That the nature of the treat in the bar-room of a country tavern raised the presumption that the treat was of spirituous liquors, and was a corrupt practice, which avoided the election.

2. That had an application been made to add a particular embracing the charge, it would have been granted.

A charge of treating a meeting of electors by an alleged agent of the petitioner was not sustained, owing to the alleged agency not having been satisfactorily proved.

One M., the financial agent of the petitioner, agreed with a voter who had a difference with the petitioner about a right to cut timber on the voter's land, to settle the matter—the voter when canvassed to vote for the petitioner referring to this difference. M. signed an agreement in the petitioner's name, whereby he surrendered any claim to cut timber except as therein mentioned.

Held, 1. That a surrender of the right to cut timber on the lands of another was a "valuable consideration," within the meaning of the bribery clauses of 32 Vic., c. 21.

2. That the agent M. was guilty of an act of bribery.

Where the right of the petitioner to claim the seat is decided adversely in one case, it is no prejudice to the respondent's case that other charges against the petitioner are not pronounced upon.

Recriminatory charges are permitted in the interest of electors, in order to prevent a successful petitioner obtaining the vacated seat if he has violated any provision of the Election Law.

The petition contained the usual charges of corrupt practices, and claimed the seat for the petitioner.

The vote at the election was: For respondent, 724; for petitioner, 720; majority for respondent, 4.

The respondent filed recriminatory charges against the petitioner.

Mr. Hector Cameron, Q.C., and Mr. A. Boulton for petitioner.

Mr. MacLennan, Q.C., and Mr. D. J. McIntyre for respondent.

During the trial, the following points were decided respecting the particulars:

Mr. MacLennan, at the opening of Court, objected to the particulars delivered by the petitioner, on the ground that they were too late, not having been delivered within the time limited by the order.

Mr. Cameron, contra: The order under which the particulars were delivered is not here, so the application is defective. Moreover, the particulars were delivered, and also further particulars.

DRAPER, C. J. A.—The particulars appear to have been accepted, and never returned to the petitioner. I think the application to set them aside should have been made in Chambers before the trial, and that the respondent should not have allowed the petitioner to proceed and incur costs. Particulars allowed.

Mr. MacLennan, on 5th August, moved to have the service of the particulars on the recriminatory charges, under the order of 31st July, allowed, and read an affidavit showing why an earlier compliance with the order was not made.

[The CHIEF JUSTICE.—An affidavit should be filed stating that the deponent has reasonable grounds for believing that he can prove the allegations.]

Mr. Cameron: The order being for better particulars, shows that those previously delivered were insufficient. The respondent made no application until the 31st July, and the order then made was not acted on until the 3rd August, and not, therefore, 24 hours before the day ap-

pointed for the trial. Numerous witnesses must be called if the particulars are now received, and the petitioner must get up evidence to reply. Besides, the order is not complied with, as the residences of the parties named are not given, and there is no facility for inquiring.

Mr. Maclellan : The order requiring petitioner to deliver particulars to the respondent within a limited time was not complied with ; but particulars delivered to the respondent up to the night before the trial have been allowed.

DRAPER, C. J. A.—I am embarrassed by the consideration that if these new particulars, or some of them, are sustained, they would be of vital import. And, on the other hand, the order being made on, I must assume, sufficient grounds, unless some sufficient reason—beyond the delay in delivering the new particulars—be shown for neutralizing the order, I am bound to give effect to it. The residences of the persons named in the new particulars are given in the scrutiny particulars, and, in fact, no prejudice is shown. The petitioner is allowed to apply for time to answer, and the indulgence now asked is granted on the terms of payment of such costs as may be occasioned to the petitioner by the granting of this application.

During the cross-examination of a witness called by the petitioner, on the case against the respondent, the following evidence was given :

William Peters : I live at Victoria Road. . . .

Cross-examined : I kept my tavern open on polling day, and sold liquor as usual. There was no polling place within 3 miles of my house, and I was told that I need not shut it. [The evidence on which Peters was held to be an agent of the petitioner is omitted].

Mr. Maclellan, on the recriminatory case, contended that the selling of liquor on polling day by William Peters, an agent of the petitioner, destroyed the petitioner's right to claim the seat.

Mr. Boulton objected, as there was no such charge in the particulars.

Mr. MacLennan: The evidence on this charge was elicited from Peters, who was called as a witness for the petitioner, and he made the statement on cross-examination, to which no objection was taken.

Mr. Boulton: Peters was called as a witness on the petitioner's case, and this evidence bears on the recriminatory case. The charge is not in the particulars, and the witness made the statement *suâ sponte*.

DRAPER, C. J. A.—It is not on the record that I can find, in any shape; nor was any application made to put it there.

The evidence affecting the result of the election was as follows:

Malcolm McDougall: I was at Simpson's hotel at Cobocok about 2 or 3 P.M. on the polling day, and about 5 or 6 miles from any polling place, while I was travelling from Kirkville to Somerville. I treated about six persons in the bar-room; some of them were strangers to me. Decanters were put down for people to help themselves.

[The CHIEF JUSTICE on the day on which he delivered judgment, made the following note opposite the above evidence: "Mr. MacLennan objected to this evidence, as the charge was not mentioned in the particulars. I received it subject to the objection. I did not think of noting this at the time; but now (18th August), being reminded of it by Mr. MacLennan, I have a recollection that it was so, but not the same as if I had noted it at the moment. I did not then think it of any great importance."]

Counsel for the petitioner contended that as it was shown decanters were put down for people to help themselves, the presumption was, that spirituous liquors had been drunk on the occasion referred to by the witness.

The Court was then adjourned until the 18th August, at Osgoode Hall, when the following judgment was delivered :

DRAPER, C. J. A.—The unsuccessful candidate, Duncan McRae, is the petitioner, and the respondent, John David Smith, has filed recriminatory charges against the petitioner.

The first case relied on by the petitioner is stated in the particulars thus : That James Ellis and one Mooney, agent of respondent, bribed Thomas Coulter and Thomas Hodgson by the payment of a disputed debt between Coulter and Hodgson. The facts proved were that Mooney asked him to vote for the respondent. Coulter would not promise nor did he refuse, but he said that there was a debt due to him for seven or more years by a firm of John C. Smith & Co., John C. Smith being the respondent's uncle. Mooney promised to write and get the debt paid if he could. Afterwards Coulter saw respondent and Ellis together, and again referred to this claim. Ellis said that respondent was not a member of the firm when this claim arose (which was proved to be the case). Respondent said he would write to his uncle, and if it was right his uncle would no doubt pay it. Coulter and Hobden (not Hodgson, as stated in the particulars) voted for the respondent. Hobden was not present at any of these conversations, nor interested in them, and it does not appear that anything was done in the matter. I think the evidence entirely insufficient to sustain the charge.

The next charge relates to an oyster supper at Buck's hotel, in Minden. There had been an election meeting in the Town Hall—about five minutes' walk from the hotel. After this meeting was over some of the respondent's friends remained together consulting about the election, and afterwards went to Buck's, where some of them boarded. There it was proposed to have an oyster supper, which Frederick J. Shove, one of the party, ordered. He

said he had been working hard for the respondent during the day, and needed refreshment. Respondent had previously gone to his own room, and Shove invited him to come down and join them. Respondent was half undressed and declined, but at the same time he urged Shove to do nothing to prejudice the election, and Shove went down, and seven or eight persons sat down to supper.

The respondent gave evidence respecting this to the following effect: I began to undress, when Shove came in and said, "Don't you want to buy a load of oats?" I asked him, "What do you mean?" He said, "There are a few of us down stairs who are going to have some oysters." It must then have been 11.30 p.m. He invited me to join them. I excused myself, and he said, "Can't Jim Ellis pay for this?" I said I thought he could. He said, "Very well," and turned down stairs. Shove swore he thought the supper should be given. It was an understanding it should be for the benefit of respondent, but respondent did not like the idea of giving refreshment. Shove thought there was an arrangement that it should be charged by Buck to respondent as a sale of oats. Shove said that he suggested this. Buck's charge was \$13.20, which was for the supper only. Shove made up the account a day or two after the supper. Oats were thirty-two cents a bushel, and Shove swore that he thought that was the way the amount was got at. Shove made it up with one Lott, Buck's book-keeper or bar-tender. He applied for payment, and Shove said forty-one bushels of oats would cover it. He also stated on re-examination that this supper was ordered without any thought of influencing Buck, and that respondent said to him (Shove) to be very careful to do nothing to interfere with the election. He said that they were careful, that the oysters were to be charged as oats, and that it was arranged with the bar-keeper it should be charged as oats; and he concluded his evidence by saying, "As we were working all day for respondent, I thought naturally that he ought to pay for our refreshment. I intended all along to have it charged

to him. I thought it necessary to forward the election." Some of those at the supper were boarders at the hotel.

James Ellis spoke of this supper, and said he was one of the party. He thought \$3.20 would have been ample payment for the supper. He heard a talk about oats after the supper was mentioned. Gaynor, one of the party who had been at the meeting, produced a paper on which was written, "Twenty bushels of oats at forty cents," and they laughed, and the paper was thrown under the table. As far as he knew, the supper had nothing to do with the election. The oysters were got from Gaynor's, who keeps a grocery near the tavern. When Shove came down from seeing respondent, he stated that respondent had said, "Whatever Jim says." The witness understood that he was meant by "Jim."

The particular to support which the foregoing evidence was given, is that one Frederick Shove, of the village of Minden, an agent of the respondent, and with his knowledge and consent, provided and furnished drink and other entertainment to a meeting of electors assembled for the purpose of promoting the election, at the hotel of D. Buck, in the Village of Minden.

I think this particular is not proved by the evidence given. I assume it to be amended so as to obviate any minor objections, but it fails in my opinion, on the essential ground that Shove is not shown to be generally the respondent's agent, nor particularly to furnish this entertainment. Mr. Shove (whose manner appeared to me to indicate that he entertained no mean opinion of himself) desired to have an oyster supper at the respondent's expense, and to evade the law against treating, which he feared might apply, proposed the absurd scheme of an imaginary purchase of oats for a sum much in excess of what the supper would have cost, and then goes to the respondent, who was just going to bed, to invite him to join them, concluding that if he accepted the invitation he would pay the bill. The respondent very prudently declined, coupling the refusal with a caution against any

improper practice. Shove made the arrangement with the bar-keeper, and afterwards made up the account for him. I suspect the bar-keeper at first looked to Shove for payment, though scarcely for the sum of \$13.20, for I cannot find that Shove ever pretended to be respondent's agent, or, even on Shove's own statement, that the respondent gave him actual or implied authority to act as his agent on this special occasion. Looking at Shove's conduct and his account of the matter, I think his evidence does not prove this charge, and the only plausible ground for sustaining it is the respondent's statement that Shove said to him, "Can't Jim Ellis pay for them?" and the respondent answered, "He thought he could." Mr. Ellis's evidence of what Shove said when he came down, of the result of his inviting respondent to join them, does not sustain Shove's account of it, nor does Ellis appear to have said or done anything in regard to ordering or authorizing the supper to be ordered. In fact, Shove represents he ordered it *before* he went up to respondent's room. I think it would be an extreme construction to hold this supper to be a violation of section 61 of the Election Law of 1868. Mr. Shove's language might be held sufficient as against himself to subject him to the penalty mentioned in the 65th section of the Act, but not to avoid the election. I find for the respondent in this part of the case.

In Hicks's case the charge is that Andrew Washington (agent for respondent), on the polling day hired the teams, horses and vehicles of George Hicks and David Mitchell to convey voters to the poll, and also paid them for horse hire, furnished the keeping of two teams, and gave dinner to them to induce them to vote for respondent.

The facts, as well as I can gather from the evidence, are that Hicks had a team of his own and was employed by Washington to draw lumber for him, Washington owning a saw mill. Hicks and Mitchell were voters, and Hicks had been canvassed by a Mr. McLaughlin for respondent. Washington had been written to by respondent

for his vote and influence, and did not answer the letter though he supported respondent. On the polling day, Washington, who was going to the poll, asked Hicks and Mitchell to go with him and vote for respondent, saying that he would take them and bring them back, and they could feed their horses and have dinner. Hicks said to Mitchell, "We should vote for Smith," and Washington said "Yes, vote for Smith," and they agreed to go.

Washington then sent off his foreman on some business to another place in a cutter, with one of the horses of Washington's own team, with instructions, after his errand was done, to meet him at the polling-place, and hired from Hicks one of his horses to make up his team, and paid Hicks half a dollar for his hire. Washington then drove with Hicks and Mitchell to the poll. The foreman arrived, and Washington and he drove off in the cutter, and Hicks and Mitchell, with the horses and sleigh, returned to Washington's house and got dinner.

On this evidence I cannot find that Washington was acting as an agent for respondent, nor that Washington was guilty of a breach of either the 61st or the 71st sections of the Election Law of 1868.

The next case on which the petitioner's counsel relied was Ralph Simpson's case.

The charge is that Malcolm McDougall, an agent of respondent, bribed, or attempted to bribe, or offered to bribe certain electors—to wit, Ralph Simpson, of Eldon, and Mrs. McDonald, of Kirkfield, and furnished and offered a sum of money to the said Mrs. McDonald to use in corrupt practices.

I find that Malcolm McDougall was an agent of the respondent. I arrive at this conclusion upon the statements contained in his examination before the County Judge, and McDougall's evidence confirms me in it. In regard to Simpson's statement, McDougall swore that he met him on the road on the polling day. He had no doubt he asked him to vote for respondent. He (Simpson) said he was going to vote for McRae, and that he (McDougall)

said nothing to him to induce him to change, by way of promise or otherwise.

Simpson swears that McDougall asked him to vote for respondent, but offered him nothing—did not mention money to him at all, but said he would like me to vote for respondent; if I would, he would see me another day, and things would be made right—that he told McDougall he would vote for McRae, and it was after this that McDougall said he would see him again.

I think the evidence falls short of what is required to bring the case within the statute. There was no gift or loan of money, or offer or promise of money or valuable consideration. It would, I think, be a forced and unwarrantable construction of the words "he would see me another time, and things would be made right," to hold them to import an undertaking fraught with penal consequences; and McDougall's assertion on oath "that he said nothing to him" (Simpson) "to induce him to change, by way of promise or otherwise," is entitled to some consideration.

I find for respondent on this charge, as far as respects Ralph Simpson.

There is another item included in the same charge—that of having bribed or attempted to bribe certain electors—namely, Mrs. McDonald, of Kirkfield, and furnished and offered a sum of money to the said Mrs. McDonald to use in corrupt practices.

It is shown that McDougall was canvassing one John McDonald in favor of respondent—not very successfully, for he said he left him quite undecided as to whether he would vote or no. They two were outside the house, and McDougall went in to take leave. Mrs. McRae, a widowed sister of John McDonald's, was there. McDougall spoke of her as an old friend of his, and it might be inferred that his acquaintance with her preceded her marriage. He said she was in reduced circumstances. He put some money—he thought \$8—in her hand, but she was unwilling to take it. She said nothing, but did not take it.

McDougall swore "This was not the first money I had given her. I swear I acted in this from personal feelings, and in no way connected with the election."

This offer to Mrs. McRae was the only offer of money he made to any one while he was out there. He did also live in that part of the country. He was the only witness who spoke to this part of the charge, and he strenuously denied its truth, and I believe him. It escaped notice at the trial that the charge had reference to a Mrs. McDonald, and the evidence to Mrs. McRae.

I find in favor of the respondent on this part of the charge.

There is a further charge that McDougall, as agent for the respondent, which I have already found him to be, bribed Duncan Monro by payment of money.

To sustain this charge McDougall and Monro were both examined. McDougall swore that he hired Monro to take him with his team to the Victoria Road, to drive him round. He went to arrange for teams to carry in voters. McKay arranged to take his teams out. He made no bargain with him. Nothing was said to him that he was to be paid. "I made no bargain with any one to hire their teams. I gave them to understand I would not promise or pay for them." Monro swears, "I was out with a horse and cutter at Mr. McDougall's request on Saturday, and at his request on the following Monday, the polling day. I was paid upon Saturday night. Nothing was then said about the Monday. I took a man (one Sickles) to the polls on Monday. Mr. McDougall asked me to drive a man to the polling place, and said nothing about paying or not paying. If I was offered pay I would take it. When I returned McDougall was gone." Now the only money paid by McDougall to Monro is stated to be \$2.50, and that is shown to be for the hiring on Saturday by the testimony of both witnesses, and to have been paid on Saturday night. This appears to me to disprove the charge of bribery; there is no particular charging the hiring or paying for the conveying of Sickles

to the polls on Monday, though there is an unsupported charge of bribing one Sickles by the payment of money. It is enough to say that this other charge (if advanced) would not have been proved by the foregoing evidence.

The remaining charge relied upon by the petitioner's counsel was a charge of treating by McDougall, as agent for respondent, upon the polling day. The only witness to prove it is McDougall himself.

He stated that he was at Simpson's hotel, at Coboconk, about two or three o'clock p.m. on the polling day. It was about five or six miles from any polling place. He was travelling from Kirkville to Somerville. He treated about six persons in the bar-room. Some of them were strangers to him. His teamster was named Edwards. He (McDougall) did not know he was a voter. The bar-room was open. They only stopped at Coboconk to water the horses. McDougall said he did not know what the parties whom he treated drank; that he was not in the habit of drinking anything stronger than beer or wine.

The respondent's counsel objected to the admissibility of this evidence. I have already expressed my very clear opinion, which I will repeat, that McDougall's agency was sufficiently established by his own evidence, which proves also that he treated five or six persons at Simpson's hotel on the polling day and during polling hours. The question as to what the parties drank was raised, and was answered by the assertion (not denied) that the witness had stated that decanters were put down and people helped themselves. I had not noted this particular expression. In fact, it never occurred to me to doubt what was the nature of this treat in the bar-room of a country tavern.

It is my unpleasant duty upon this evidence to find that respondent was guilty of a "corrupt practice" through his agent, Malcolm McDougall, but without the respondent's actual knowledge and consent.

I come now to the recriminatory charges, of which four are relied upon by the counsel for the respondent.

1. That petitioner, on the 6th January, at Victoria Road Station, provided drink and other entertainment at his own expense for a meeting of electors assembled for the purpose of promoting his election, contrary to the 61st section of the Election Law of 1868. Hector Campbell proved that he kept an inn at Victoria Road; that shortly before the polling there was an election meeting of some fifty or sixty persons at a stone building; after the meeting a number of them came to Campbell's inn, and drink was given to them by order of Dalglish, who said petitioner would pay for it. During the same afternoon Dalglish himself returned to the inn, and paid the charge, which amounted to \$2. The petitioner did not speak to Campbell on this matter at all. Richard Killingsworth swore that he was present when the petitioner asked Campbell if there was anything in the charge relating to treating at his tavern on his (petitioner's) behalf, and Campbell said there was no treating, and that he did not see petitioner there. The petitioner, the last witness called by respondent, swore that the meeting at which he was nominated was held at a store-room a short distance from the hotel. He expressed a doubt as to whether Dalglish was there, and said positively that he did not make or authorize any payment to Peters (who also kept a tavern close by) or to Campbell for anything furnished that day. He said he read the charge respecting the treat at Campbell's to him (C.), who said there was no such thing—that petitioner was not at his house at all.

It was stated, and not denied, that Dalglish was the petitioner's brother-in-law. The petitioner proves that Dalglish accompanied him (driving in the sleigh) on some of his electioneering tours; but of any acts of his—excepting what Campbell swore to—I find scarcely a trace. Unfortunately, the efforts to serve him with a subpoena on (as I understand) the day this trial began, were not successful. I am not satisfied that his character as agent is proved, and must therefore decide in the petitioner's favor on this charge.

2. Next comes McIlroy's case. The particulars are in these words: "John Merry and Archibald McFayden (McFadyen), the financial agent of the petitioner, on the evening of the 15th January, 1875, before the day of polling, bribed Francis McIlroy, an elector, to induce him to vote for the petitioner, by the giving up of an agreement for the cutting of timber upon Lot No. 2, in the 5th concession of the township of Carden, to the said Francis McIlroy."

It was proved that McIlroy had by some agreement in writing, which was not produced, sold the timber growing upon the lot named, and that under it all the pine timber and basswood had been cut down by the petitioner's workmen. McIlroy insisted that he had sold the pine timber only, and that the word "pine" should have been inserted before "timber." This agreement was made upwards of two years before the election, and the pine and bass had all been cut, and under it, as McIlroy stated, the petitioner claimed to have bought all the timber. Two days before a meeting of the petitioner's friends at Kirkville, Merry and Gibson, two of his supporters, asked McIlroy who he intended to vote for, and he said he did not know that he should vote at all, and told them of the difference between him and the petitioner, and Merry said he thought petitioner and witness could settle it. After the Kirkville meeting was over, McFadyen, who was one of petitioner's clerks, told McIlroy to wait and settle this matter. McIlroy said if petitioner would give up his claim to the rest of the timber, "we would call it square, and have no hard feelings about the matter." McIlroy had previously told Merry and Gibson that if petitioner would give up all claim to the timber, except what he had then cut, he (McIlroy) would not go against him; and either then or soon after McIlroy got from McFadyen a paper in the following terms: "Balsover, January 13th, 1875. This is to certify that I do not claim any timber of Mr. McEllroy, excepting the pine timber and the basswood that is already cut on west half Lot 5, on the 5th

con. in the township of Carden, county of Victoria." (Sd.) "Duncan McRae, per A. McFadyen, witness."

John Merry testified that he desired to help petitioner, and went to see McIlroy about his vote. He knew nothing then of the difficulty about the timber. McIlroy told him he generally supported petitioner. Merry saw petitioner, and told him or McFadyen what McIlroy had said to him. He afterwards heard that there had been a settlement. The petitioner in his evidence said as to this matter: "I had a transaction with McIlroy about timber. I told him I had no claim except for the pine and basswood. Merry asked me on the night of the meeting if I was going to claim any more of McIlroy's timber, and I said I did not intend to cut any more of it. I do not remember that McFadyen or Gibson said anything about it. I know nothing about the paper mentioned by McIlroy. I never heard of it until last Monday, when I got the particulars. McFadyen is not an elector."

I think that the surrender of a right to cut timber on the lands of another who desires to obtain such surrender is clearly within the meaning of the term "valuable consideration." It was obviously so regarded by McIlroy, and was so asked for and accepted by him. The evidence is conclusive as to McFadyen having delivered the assurance that McIlroy would not in that event oppose the petitioner, and as to his having been an agent of the petitioner.

I find, therefore, that the petitioner, through his agent, Archibald McFadyen, was guilty of a "corrupt practice," but without the petitioner's actual knowledge and consent.

After the foregoing judgment was given, counsel for the respondent called the learned Judge's attention to a difference of ruling between the treating by Malcolm McDougall, an agent of the respondent, at Coboconk on polling day, and the selling of liquor on polling day by Wm. Peters, an agent of the petitioner, at Victoria Road. The evidence as to the latter is given on p. 255.

On the following day (19th August) the learned Judge added the following to his judgment :

DRAPER, C. J. A.—This conclusion appeared to me to render it unnecessary to form an opinion upon the two remaining matters advanced by way of recrimination. It is mainly in the interest of electors that this *tu quoque* accusation is permitted, in order to prevent a successful petitioner from obtaining the vacated seat if he also has violated any provision of the Election Law.

However, in consequence of a reference made by one of the learned counsel to an apparent inconsistency between my ruling in the Coboconk treating case and the keeping open on polling day of his tavern by William Peters, I enlarged the time for pronouncing my final conclusion until to-day. I must say it struck me that it would be an extreme case if I should find myself compelled to hold that Peters (though an election agent of petitioner), being himself the tavern-keeper and selling liquor as usual in the course of his business, could thereby make the petitioner's return, if he had been elected, void, though no connection between the election or the petitioner and the keeping the tavern open on the polling day was shown to exist. Moreover, I noticed that Peters swore (as if justifying his acts) that there was no polling place within three miles of his house. I have been told that there is an erroneous idea abroad that the law does not render necessary the closing a tavern at that distance from the polling place ; and McDougall's evidence seems to point to a similar mistake.

Having arrived at a result adverse to the petitioner upon McIlroy's case, I can see no object in going into Peters' case, and my refusal to receive evidence to support it could be no detriment or hindrance to the respondent. On a broad view of the case, I am of opinion that the evidence in the Coboconk case was properly received, though it may be doubtful. Had an application been made to me in regular form to add a particular embracing

it, I think that (always on reasonable conditions) I could not have refused; and if so—the evidence being conclusive to prove it, and given by an apparently very trustworthy witness—the error resolves itself into one of form. I adhere to my conclusion on the charge avoiding the election, and also to that upon McIlroy's case as against the petitioner. It is no prejudice to his case that the other charges are not pronounced upon.

(9 *Journal Legis. Assem.*, 1875-6, p. 13.)

CARDWELL.

BEFORE CHIEF JUSTICE DRAPER.

BRAMPTON, 7th and 13th September, 1875.

FRANCIS O'CALLAGHAN, *Petitioner*, v. JOHN FLESHER,
Respondent.

Acts of agency—Hostility to opposing candidate—Corrupt practices.

One S., who desired nomination as a candidate by a Reform Convention, was not nominated, and thereupon, from hostility to the convention and its nominee, opposed the candidate of the convention, which thereby had the effect of supporting the respondent. At the close of the poll, the respondent publicly thanked S. for being instrumental in bringing about his election. S. owned a shop and tavern, but the license for the latter was in his clerk's name; and during the polling hours on polling day spirituous liquors were sold and given in the shop and tavern.

Held, that what was done by S. at the election was in pursuance of a hostile feeling against the convention and its candidate, and did not constitute him an agent of the respondent.

The petition contained the usual charges of corrupt practices.

Mr. Bethune for petitioner.

Mr. J. Hiltyard Cameron, Q.C., for respondent.

The evidence affecting the election is set out in the judgment.

DRAPER, C. J. A.—The only point of importance in this case is, whether the facts in evidence establish that Peter Small, a merchant and hotel keeper within this electoral riding, was an agent of the respondent. That his hotel

was open on the polling day, and during polling hours, and that spirituous liquors and beer were freely given and sold therein, were not at all denied.

The circumstances are peculiar.

A convention of the electors of the riding, who belonged to the Reform party, was called together to nominate their candidate for this election. Certain delegates had been chosen or otherwise appointed to attend this convention. Peter Small had fully anticipated that he would be the nominee. He was a well-known member of the Reform party, and was a Roman Catholic. He kept a merchant's store and a hotel in the village of Ballycroy, in the township of Adjala, and had large dealings and connections throughout the riding. The convention, however, disappointed his expectations and nominated Mr. Bowles, who became the opponent of the Conservative candidate, the now respondent.

In his evidence Mr. Small stated, in regard to Bowles and his nomination by the convention, that "people voted for him (in the convention) who had no right to vote. I showed up the convention; I asked people to vote against Bowles. I made it understood I wanted to defeat the nomination of the convention. I considered that Bowles had personally broken faith with me. Though I had a conversation with the respondent after Bowles' nomination, I never spoke to him at all about the election. By opposing Bowles I was in effect supporting respondent. A large number of my friends are Roman Catholics. I suppose there are seven or eight hundred Roman Catholics in the riding. I remember telling the respondent to see young Walsh and he would give him some information." On his cross-examination he said, "It made no difference to me who was the nominee of the convention. People were allowed to vote in the convention who had no votes in the riding," and he mentioned the names of several such persons. "That was the ground of my acting publicly. I was never answered except by one Jones. I had nothing

to do with the respondent in trying to procure his election either for his party's sake or his own."

Walsh was a clerk and employee of Small in the store and business, and occasionally in the bar of the hotel. He was also the telegraph operator, the telegraph office being in the store, which, with the hotel (all forming one building), was burnt down in April last. The hotel license was taken out in Walsh's name. Spirituous liquors were sold in the shop as well as in the hotel. Walsh said he was a Conservative, and was from the first favorable to the respondent, and spoke to others in his favor and to get votes for him, and wrote one or two letters with the same object. He spoke to the respondent about the election, and was his scrutineering agent at the poll at Ballycroy under an appointment signed by respondent, who left three appointments in blank, signed by him, with Walsh, to be used if necessary, so that the respondent might always have an agent at the poll; but they were not used, as he (Walsh) was not absent from the poll more than five minutes. The poll was taken in a separate building very near the shop and hotel. He was at the meeting at Tottenham, in the township of Tecumseth. Small took him there, and Small made a speech to which a Mr. Jones replied. Small was showing up the convention, and accused Jones of treachery. Small was, as Walsh understood, desirous of defeating Bowles. Walsh told respondent of the dissatisfaction of the Roman Catholics at the unfair exclusion of Small, and that he thought this dissatisfaction improved respondent's prospects. After the result of the polling was known, and late in the evening of polling day, the respondent returned thanks for his election, and said he was thankful to Small for being instrumental in bringing about his election, which remark may have been made in irony, as Small had supported Bowles at a previous election. On cross-examination he (Walsh) added, "I think Small expected the nomination, and I understood he was thrown out because he was a Roman Catholic. There was a breach of faith among the mem-

bers of the Reform convention ; there was a change between the open and the secret voting, and Mr. Small's feeling arose from this."

I have set out this evidence with some particularity, because upon it is founded an argument that it maintains the assertion that Small ought to be regarded as an agent for the respondent as to this election ; that the respondent must consequently be bound by his acts, and that if he is proved to have been guilty of corrupt practices, they will attach upon the respondent as the acts of his agent, and will avoid the election. I will take the question upon the assumption that Small was guilty of corrupt practices against the election laws—a fact in reality not disputed.

Small by his own evidence, as well as by circumstances appearing which indirectly but strongly lead to the same result, was a well-known member of the Reform party ; nothing transpired during the whole trial to put this in doubt, and not an expression was drawn from him in his examination to raise a doubt that his political opinions were unchanged. He admitted that he had a conversation with the respondent, but not about the election ; that he had told him to see young Walsh, who would give him some information. The respondent did see Walsh, who informed him of the dissatisfaction of some of the Roman Catholics at the treatment of Small by the convention, and that, in Walsh's opinion, this was favorable to the respondent's success ; but however well founded that young man's opinion, I cannot discover in it any proof that Small had become the respondent's agent for the election, or that respondent had so considered him. Mr. Small was disappointed in an object which he desired and expected to have obtained ; he was irritated because (whether rightly or not) he thought there had been treachery in the conduct of some on whom he had relied as friends, and that unfair means had been resorted to, by which one of those friends accepted and occupied the very position which he coveted ; and he resented it not merely in words, but in the acts which he stated in evidence ; and it is to be

remarked that not another witness but himself proves any act on which reliance has been placed to prove his agency. It is perfectly true that everything he did under the influence of these feelings which was prejudicial to the nominee of the convention was favorable to the respondent ; that every obstruction placed in the path of the one was *pro tanto* a clearing of the way for the other ; but, for the purposes of this question, I must regard the motive which brought about the acts relied upon. I think I have the key to this whole conduct, and that I have shown what dominating influence governed him. All that he is proved to have done is accounted for by his hostility towards the convention and their nominee, while there is really no direct evidence of his having done anything which furnishes the ordinary proof from which agency is inferred. He did not canvass for the respondent either with the respondent or alone. He attended no meetings called by the respondent—for the meeting at Tottenham, if not a Reform meeting, was a mixed meeting, and his speech at it was hostile to the convention and its nominee on account of their conduct towards him. He does not appear to have solicited one vote in favor of the respondent or to have taken one vote for him to the poll ; and, while fighting on purely personal grounds against the Reform candidate, he does not change his opinions as a Reformer. I freely grant that his conduct from a party stand-point was absurd ; but he was an angry man, listening to the promptings of disappointed and exciting feelings of wounded self-esteem ; but I can find no proof in it of his agency in favor of the respondent ; nor can I fasten upon him a character which I feel convinced he never meant to assume. I can quite understand Small's resolve to oppose Bowles, and to do all that he could to defeat him, although in so doing he was helping the opposite party, without desiring the success of Bowles' opponent on any other ground than hostility to Bowles, and disregarding all other consequences of his gratifying that hostility ; but I cannot convert such a course into an agency which is to affect a party who

is not in any way connected with the difference between Small and Bowles, or hold the respondent to be affected by anything done by Small in pursuance of a vindictive feeling against another, to which the respondent was no party.

I must therefore dismiss the petition; and can find no reason which will justify me in refusing to give the respondent his costs.

(9 *Journal Legis. Assem.*, 1875-6, p. 23.)

WEST PETERBORO.

BEFORE CHIEF JUSTICE DRAPER.

PETERBORO, 30th and 31st July; 2nd and 18th August, 1875.

BEFORE THE COURT OF APPEAL.

TORONTO, 17th September, 1875.

WILLIAM HEPBURN SCOTT, *Petitioner*, v. GEORGE ALBERTUS COX, *Respondent*.

Bribery by offer of employment—Contradictory evidence—Treating during polling hours—Fraudulent device, enabling an unqualified person to vote—Corrupt practice—Special case—Costs.

Evidence of admissions made by an agent after his agency has expired is inadmissible.

Where, in evidence of offers of bribery, an assertion on one side is met by a contradiction on the other, the uncorroborated assertion is not sufficient to sustain the charge.

A candidate's appeal to his business, or to his employment of capital in promoting the prosperity of a constituency, if honestly made, is not prohibited by law.

Quære, Whether the word "employment" used in the bribery clauses of the Act refers to an indefinite hiring, or would include a mere casual hiring.

One T., who was on the roll as an elector, and had sold his property in June, 1874, before the final revision of the Assessment Roll by the County Judge, was, with the knowledge of the respondent—who was aware a doubt existed as to T.'s right to vote—given an appointment to act as scrutineer at a distant polling place, and also a certificate from the Returning Officer under 38 Vic., c. 3, s. 28, to enable T. to vote at the place where he was to act as such scrutineer, at which place T. voted without taking the voter's oath, and returned without entering upon the duties of scrutineer. On a question of law reserved on the above facts for the Court of Appeal,

Held, that the act complained of was not a corrupt practice under the statute; but under the circumstances, the Court gave the respondent no costs in appeal.

The petition contained the usual charges of corrupt practices.

Mr. Hector Cameron, Q.C., and Mr. H. H. Smith for petitioner.

Mr. Bethune and Mr. D. W. Dumble for respondent.

During the examination of a witness respecting his account for liquors supplied to voters on polling day, which he presented to one Peter Hamilton, an agent of the respondent, on the day after the election,

Mr. Cameron asked what Hamilton said to the witness when he presented the account to him the day after the election.

DRAPER, C. J. A.—I refuse to allow the question. Hamilton's agency expired with the election. Even if he asserted some fact of importance bearing on the issue, his statement of that fact would not be evidence to charge the respondent. As to mere admissions, there can be no doubt ; as to matters of fact, Hamilton may be called.

The evidence on the charges of corrupt practices showed that two persons, Cardinelle and La Plante, who had canvassed among the French voters, had treated several persons in taverns during polling hours on polling day. The evidence on the other charges is set out in the judgment.

DRAPER, C. J. A.—At the close of the petitioner's case, Mr. Bethune admitted that the agency of Cardinelle and La Plante was proved, and that he could not deny that the evidence established that they, being such agents, had violated the 66th section of 32 Vic. c. 21, and consequently that the respondent could not retain the seat. He contended, however, that whatever was done by these agents contrary to law was done contrary to his wishes, and without his knowledge and consent. If the petitioner, however, persisted in the personal charges, he called upon the counsel on the other side to state on which of them he relied.

Mr. Cameron stated that he relied on the second particular, charging that respondent offered to one John Drake, a voter, permanent employment during the summer, if he would vote for him.

Also on the third particular, charging that respondent offered to one Cole Barrett employment if he would vote for him.

Also on the fourth particular, charging that respondent offered to one John C. Wood employment during the coming summer if he would use his influence for respondent.

Also on the twelfth particular, charging that respondent offered and agreed to pay the travelling expenses of one Jeremiah Daley, of the Town of Peterboro, from that town to the place where the said Daley was then intending to work, if the said Daley would vote for respondent, and did pay such his expenses.

Also on the thirteenth particular, charging a fraudulent device in procuring from the Returning Officer a certificate that one Frederick Taylor was entitled to vote in the second ward of the Town of Peterboro, his name appearing on the voters' list, though he had parted with the property in respect of which his name so appeared; and in further pursuance of the said device, in giving to the said Taylor a colorable appointment to act as agent for the respondent, on the polling day, at one of the polling places for the township of North Monaghan, for the purpose of enabling the said Taylor to vote, without having the voter's oath tendered to him, whereas it was not intended that the said Taylor should, nor did he, act as agent for respondent at the said polling place in North Monaghan.

I need not take up time in discussing the evidence of Drake. His statement is that when the respondent asked him for his support, he replied he had not made up his mind, and added: "I suppose if I am idle, you will give me work," and that respondent said he would give him work for the summer. The conversation was talked of,

and four or five weeks afterwards he was applied to to state what he could prove, and he put his mark to a statement drawn up from his answer to this inquiry. He stated on the trial that he hoped, as times were dull, to secure work for the ensuing summer, and that he told his then employer (Mr. Clark), a few minutes after respondent left, that the respondent had asked him for his vote, and had *offered* him work for next summer, which is stronger than his present statement. The respondent swore that when he asked Drake for his vote, that he promised so readily that he doubted if Drake knew him—that Drake did not even ask him “If I’m idle,” etc., and that not a word passed between them on the subject of respondent’s giving him work. Several witnesses were examined with reference to Drake’s character for truthfulness. In answer to their unfavorable statements, a number of persons were called who amply sustained him. But I am quite clear that in the face of the respondent’s positive denial, I cannot take Drake’s uncorroborated assertion as sufficient to sustain this personal charge.

Barrett’s evidence is also relied on to sustain another personal charge. He swore that respondent asked him for his vote, and he replied that he had promised Scott. Respondent said that Scott did not give any work. He heard respondent, at a public meeting at the Town Hall, say he had lots of work on hand, and plenty of money to spend on it, and he would employ workmen as soon as the election was over. His statement of a promise of the respondent to give him work in return for the exercise of his influence at the election is positively denied by the respondent. I cannot on such a state of evidence find that this personal charge is proved. I may remark also that I am not disposed to treat what a candidate may say in public, to the assembled electors, before or during an election contest, as furnishing evidence of offers or promises to corrupt individuals. An appeal to his business as being a benefit generally to the community, or to certain classes of it, or to the employment of his capital

in a manner promoting the prosperity of the constituency, if honestly and truly made, is no more prohibited by the law than an appeal to distinguished public services would be, when a man is fortunate enough to have them to appeal to. It is against the personal corruption of individuals that the law has been provided, and that law will be the more respected if it be administered in a spirit of wise moderation.

Then comes the charge which rests upon the evidence of John C. Wood, and which may be stated in nearly his own words. Respondent "asked for my vote; I told him I had none. He told me, if you will give me your influence, I will give you the painting of what work I am carrying on; you can do a good deal among the English people. I told him I did not think much of his promises." The respondent meets this thus: "I did not say to him that if he would use his influence for me, I would give him work." In commenting on this case the respondent's counsel suggested that what Wood swore to amounted to no more than an endeavor by respondent to get his (Wood's) services to canvass for him, for which he was willing to give him a consideration. It may be that the words are open to such an interpretation. I do not, however, rest upon it; I am not free from doubt whether the word "employment," as used in the statute, refers to the mere indefinite hiring of a mechanic or a laborer. It is connected with the words "office" and "place," and if the maxim *nositur a sociis* be applied to its construction, it could scarcely include a casual hiring. The present case, however, does not render it necessary to decide that point. There is here an assertion on one side met by a contradiction upon the other. The accuser admitted an unfriendly feeling to the respondent, and his own reputation for veracity was somewhat impeached. I treat this charge as not proven.

Daley's case was given up by the counsel for the petitioner, and Taylor's case is the last to be disposed of.

Frederick Taylor was put upon the roll as an elector, being owner of Lot No. 8, east of Water Street, town of Peterboro, and in the West Riding. He had sold this property in June, 1874, having removed to Lindsay in Oct., 1873. He had also a vote in the East Riding. He was asked to vote in that riding, and went to Peterboro on Saturday, 16th January. He was at respondent's house about four hours, but, he says, had no conversation with him at any time respecting his voting. But he talked with Fairbairn, a clerk of respondent, who insisted his vote was good; and the subject was discussed in respondent's committee room between Fairbairn, Taylor and Lacy, another of respondent's clerks. Taylor saw the voter's oath in the committee-room. That same night Lacy got from the Returning Officer a certificate under the 28th section of 38th Victoria, under which Taylor could vote at the election, at the polling place where he was stationed during the polling day, and Fairbairn handed to Taylor this certificate, together with an appointment in writing, signed by the respondent, authorizing Taylor to act as his agent or scrutineer at the polling place in North Monaghan. Taylor said that he thought these documents were given to him to enable him to vote without taking the voter's oath—it was said it was not likely he would be sworn there. He went to North Monaghan with one Robinson, who was also an agent for respondent at that polling place. They arrived at the poll before nine a.m. Taylor tendered his vote as early as he could, and the voter's oath was not tendered to him. He returned to Peterboro without even entering upon the duties of respondent's agent at North Monaghan, and voted in the East Riding.

On the examination of the respondent upon a Judge's order, he said, "I signed my appointments of agents in blank, and they were filled in by the committee." And further, "I understood on the polling day that Taylor went out to North Monaghan and voted there. I may have heard, the Saturday before the polling day, that

Taylor was to be sent out there. I think it is likely that I did hear it then. I understood that he was going out there to act as agent, and that he would vote there. I think he came down from Lindsay on the Friday or Saturday. Very likely I understood from himself that he was going out to North Monaghan. He went with Robinson, who was my agent at North Monaghan. I understood that there was a question whether his vote was good or not. I knew that he had sold his property in Peterboro. It is possible that he may have been sent to North Monaghan as my agent, for the purpose of getting his vote in. I was under the impression that he was sent there for that purpose. I didn't suppose he was going to stay there all day to act as my agent." Robert Fairbairn, however, says that he asked Taylor to go out as agent for respondent to North Monaghan; that he really thought Taylor had a vote; and that he asked Taylor in good faith to go as scrutineer, and not from any thought of getting a vote—that he did not know he had sold his property—and that he knew Taylor had no knowledge of the voters in North Monaghan.

It was admitted that there were appeals to the County Judge against the voters' lists in each of the wards in the town of Peterboro for the year 1874, and that the lists which were used at the polls were the lists of 1874.

Upon the evidence given before me, I find that prior to June, 1874, Taylor owned property which entitled him to vote in the West Riding of Peterboro, and that he parted with it in June, 1874, but that his name was inserted on the roll for that year, and it is not proved that it was taken off on any revision of appeal.

I find that Taylor was doubtful of his right to vote, and whether he could properly take the voter's oath if called upon to do so.

I find that it was agreed that Taylor should be nominated as respondent's agent at the polling place at North Monaghan, in the West Riding of the county of Peterboro, for the day of polling, and that a certificate should

be obtained from the Returning Officer under the 38th Vic., chap. 3, sec. 28, to enable Taylor to vote at the polling station at North Monaghan.

I find that such certificate was obtained from the Returning Officer by one Lacy, a clerk of the respondent.

I find that the respondent had signed appointments in blank, and placed them at the disposal of his committee for the election, in order that the blanks should be filled with the names of such persons as should be selected to act as agents at the several polling places.

I find that Robert Fairbairn, who was a clerk of the respondent, got one of such appointments so signed by the respondent, in which the name of Taylor was inserted, though it was not proved by whom.

I find that Fairbairn delivered the said certificate and the said appointment to Taylor, and that Taylor proceeded to the polling place at North Monaghan and voted soon after the poll was opened, without taking or having tendered to him the voter's oath.

I find that immediately after having voted, Taylor left North Monaghan and returned to Peterboro, without having entered upon the duties of agent for respondent at the polling place at North Monaghan.

I find that respondent knew that Taylor was going to North Monaghan to act as agent and to vote there.

I find that respondent was aware that a doubt existed as to whether Taylor had a right to vote, and knew that Taylor had sold the property in Peterboro which was his only qualification to vote at that election.

I find that Taylor was sent to North Monaghan in the expectation that his vote would be received without dispute, and that he would not be required to take the voter's oath.

I find that Taylor's appointment as agent for respondent was merely colorable, and that the respondent did not expect that Taylor would perform the duties of agent at the polling place at North Monaghan.

And I reserve for the decision of the Court of Error and Appeal the question of law whether, under these findings, I should hold and report that a corrupt practice has been committed by and with the actual knowledge and consent of the respondent, or by his agent or agents without his actual knowledge and consent ; and I reserve the final determination of this petition, and the certifying thereof to the Clerk of the Legislative Assembly of Ontario, until the said Court of Error and Appeal have expressed and given their opinion and determination upon the question reserved, or have made some other decision or order in the premises.

The question of law reserved by the learned Chief Justice was argued before the Court of Appeal on the 17th September.

The COURT (Draper, C. J. A., Strong, Burton, and Patterson, JJ. A.) held that the act complained of was not a corrupt practice within the statute ; but under the circumstances, gave the respondent no costs.

The CHIEF JUSTICE thereupon certified that the election was void, and reported that Cardinelle and La Plante were proven at the trial to have been guilty of corrupt practices.

(9 *Journal Legis. Assem.*, 1875-6, p. 17.)

HALTON.

BEFORE CHIEF JUSTICE DRAPER.

MILTON, 12th to 14th May, 1875.

BEFORE THE COURT OF APPEAL.

TORONTO, 22nd June and 20th September, 1875.

JAMES M. BUSSELL *et al*, Petitioners, v. WILLIAM BARBER,
Respondent.

*Refreshment at a meeting of electors—Irregularities in voting by ballot—
Undue influence—Bribery—Promise of a “nice present”—Appeal on
questions of fact.*

Refreshments provided at a meeting of electors, all of one political party, or at a meeting of a committee to aid in returning a candidate, by and at the expense of one or more of their number, unless in some extreme case, cannot be deemed a breach of the provisions of the statute against treating.

One B., a voter who could neither read nor write, came into a polling booth, and in the presence of the Deputy Returning Officer asked for one not present to give him instructions how to mark his ballot. The Deputy Returning Officer gave the voter a ballot paper, who then stated he wished to vote for the respondent. One W., an agent of the respondent, in the polling booth, took the pencil and marked the ballot as the voter wished, and the voter then handed it to the Deputy Returning Officer. No declaration of inability to read or write was made by the voter.

Held, that no one but the Deputy Returning Officer was authorized to mark a voter's ballot, or to interfere with or question a voter as to his vote; and the Deputy Returning Officer permitting the agent of a candidate to become acquainted with the name of the candidate for whom the voter desired to vote, violated the duty imposed on him to conceal from all persons the mode of voting, and to maintain the secrecy of the proceedings.

One B. claimed the right to vote in respect of his wife's property, and was told by W., an agent of the respondent, that he could not vote unless he could swear the property was his own. The voter's oath was read to him, and the agent repeated his statement, and said he would look after the voter if he took the oath. The voter appeared to be doubtful of his right to vote, and withdrew.

Held, that the agent was not guilty of undue influence.

Quære, Whether the act of the agent as above set out was undue influence under 32 Vic., c. 21, s. 72.

On a charge that the respondent offered to bribe the wife of a voter by a “nice present,” if she would do what she could to prevent her husband from voting, three witnesses testified to the offer; the respondent denied, and another witness who was present heard nothing of the offer. On this evidence, and there being no proof that the witnesses in support of the charge were acting from malicious motives or corrupt expectation, nor any evidence impeaching their veracity, the charge was held proved.

The respondent appealed to the Court of Appeal on the finding of the learned Chief Justice on the above charge of personal bribery.

Held, 1. That an appellate court will not, except under special circumstances, interfere with the finding of the court of first instance on questions of fact depending on the veracity of witnesses and conflicting evidence.

2. That as the Judge trying the petition had found that the respondent had made the offer to the wife of the voter in the manner above stated, such an offer was a promise of a "valuable consideration," within the meaning of the bribery clauses of 32 Vic., c. 21.

Per Richards, C. J.—The intention of the Legislature was, that votes should be given from the conviction in the mind of the voter that the candidate voted for was the best person for the situation, and that the public interests would be best served by electing him; and that the evil to be corrected was supporting a candidate for *causâ lucri*, or personal gain in money or money's worth to the voter.

The petition contained the usual charges of corrupt practices.

Mr. James Beaty, Q.C., and Mr. R. S. Appelbe for petitioners.

Mr. Bethune for respondent.

In addition to the facts set out in the judgment, it appeared in evidence that the respondent and one McCraney called at the house of Nathan Robins to solicit his vote. There were present at the time Mr. and Mrs. Robins and their son.

The effect of Mrs. Robins' evidence was that respondent said to her if she would keep her husband at home from going to vote for Beaty, he would do something for her and give her a nice present. Mrs. Robins said she would do what she could. Respondent put his hand on her shoulder and said, "Do what you can and keep your husband from the election, and I will make you a nice present."

Nathan Robins said, "Mr. Barber asked my missus whether she would try to get me not to go to the election, or to get me to vote for him, and he would do something for her."

The son, Nathan Henry Robins, said: "I heard Mr. Barber say if she would keep father at home or get him to vote for him (Barber), that he would do something nice for her, or make her a nice present, or get her something nice, I am not sure which; there was something nice about it, any way."

The respondent, in his examination, denied that he had offered Mrs. Robins anything. McCraney said he was present at the time of this conversation, but that he had heard nothing of any promise being made to Mrs. Robins.

DRAPER, C. J. A.—I am under the necessity of giving an oral judgment from the notes which I have made, after a close examination and careful consideration of the testimony of the various witnesses. I may say that being somewhat new to the practice of deciding questions of fact, I have felt this duty especially burdensome, where there was contradictory evidence upon important points.

I can, however, without difficulty dispose of several of the charges of treating, as I am satisfied, by looking carefully at the dates assigned to them, they took place at too early a period to justify a conclusion that they were acts of corruption designed to affect this election. There were cases which, having regard to the time when they happened, were much more questionable. They were however, taken separately, not only in some degree doubtful, but also very trivial, and were too few in number to treat them as in the aggregate sufficient to establish general designed or systematic corruption. Again, a meeting of electors all of one way of thinking, to support a particular candidate, or of a committee to aid in his return, at which refreshments were provided at the expense of one or more of them, could not, unless in some extreme case, be deemed a breach of the provisions against treating.

Mr John White was examined, and said he was a supporter of the respondent, but not a committee-man, and attended no committee meetings, though he attended several public meetings. He acted as the respondent's agent at the poll at Drumquin—"worked with a will for him. I saw no treating; I had a bottle of brandy; I drank some myself; I gave none to any one. This bottle I left on a work-bench in a blacksmith's shop which had been converted into the polling booth; it was left on my great-coat there; I think I covered the bottle with my coat;

I invited no one to drink ; I left the bottle afterwards at Brown's private dwelling house ; it was nearly empty." After some further statement, relative to two meetings at Palermo, which appeared to have no connection with this election, Mr. White proceeded to say that he thought there were three or four persons, illiterate or otherwise, incapable, without explanation, of marking their ballot papers. That one Barry, who could neither read nor write, asked for instructions from one Charles Connor, who was not present. Mr. White suggested that he should act for Connor, being a supporter of respondent. The Returning Officer was present, and heard and saw all that passed. The ballot paper was placed in Barry's hand by the Returning Officer ; he got the pencil and stated he wanted to vote for Barber ; then Mr. White took the pencil and marked the ballot paper as Barry had expressed he wished it should be marked, and then Mr. White says he believes the ballot paper was handed by Barry to the Returning Officer. Now, the 12th section of the Ballot Act provides for this case : 1st, there must be a declaration of incapacity to mark the ballot paper, and the Deputy Returning Officer shall, in the presence of the agents of the candidates, cause the vote of such person to be marked on a ballot paper in the manner directed by such person, and shall cause the ballot paper to be placed in the ballot box. A form of declaration is given in Schedule C to the Act, and an attestation clause is given in Schedule D, to be signed by the Deputy Returning Officer. Then by section 8, subsection 10, power is given to the Deputy Returning Officer, either personally or through his clerk, to explain to the voter the mode of voting and the colors in which the numbers and names of candidates are printed on the ballot paper. Provision is made for receiving and entering objections by a candidate or his agent to a vote, as well as a refusal of a voter to take the oath or affirmation, when he has been required and refuses to take the same.

It seems clear to me that no one but the Deputy Returning Officer is authorized to perform these official acts,

or to interfere with the voter, or question him as to his vote or his right to vote. His name must be on the voters' list; this gives him a *prima facie* right to vote. The candidate or his agent may object, and the duty of the Deputy Returning Officer is in that case plainly prescribed. If the voter is required to take the oath or affirmation and refuses, his vote is not to be received. The Deputy Returning Officer is to conceal as far as possible, from all persons present, including the poll clerk and the agents of the candidates, as well as all other persons, the number printed on the ballot paper and upon the counterfoil, and not to permit the counterfoil to be inspected.

Mr. White spoke of himself as scrutineer (and not general agent for the respondent), appointed by writing. The appointment was not put in evidence. I do not find the term "scrutineer" in the Ballot Act; but I think the candidate may limit the authority he gives to acting for him during the polling. It would so far limit the powers and authority of the agent, and consequently the responsibility of the principal. It is, however, the Returning Officer's duty not to permit interference by either candidate or agent with the discharge of his own prescribed functions, to execute what the law prescribes, and not to delegate to another that which is required of himself in this respect. I do not see how the Returning Officer can permit the agent of any candidate to become acquainted with the name of the candidate for whom the voter desires to vote, or to mark the ballot accordingly for the voter, without violating the duty imposed on him to conceal from all persons, including the poll clerks and the agents of the candidates, the matters mentioned in the 9th sub-section of section 8 of the Ballot Act, or maintain the secrecy of the proceedings so rigidly directed by the 30th section of that Act. I feel compelled to say that I think the Deputy Returning Officer was at least guilty of great indiscretion in his conduct in regard to the voter Barry.

There is also another case at the same polling place which was a subject of complaint and investigation as to

which William Black swore that he went to Drumquin on the polling day with the intention of voting. Mr. White objected: "My wife owned the property." White said, "I could not vote unless I would swear the property was my own." The Returning Officer said, "I had a vote. The Returning Officer read the oath; I was a little afraid to take the oath after what Mr. White said. He said I could not take it; he said he would look after me if I did take it. I had never heard the oath read before. Mr. White insisted I could not vote unless I was owner, and I would not swear that, and withdrew." Mr. White swore that he thought he told the voter that he thought he could not take the oath, and Black refused on hearing the oath read. He (Mr. White) said he thought the man had no right to vote; that he did not intend to mislead him; that he had no influence over Barry, and did not know him before.

Looking at the 72nd sec. of 32 Vic., cap. 21, I find it very difficult to determine that this is intimidation within the meaning of that section. If it were, the only or the most obvious meaning of the words used, so that they would convey to the voter the idea of force, violence or restraint, or the infliction of injury, damage, harm or loss, or in any manner import intimidation, as by threatening the use of force, etc., the case would be within the 72nd section, and the offence, undue influence. All that was said, was said in the presence of the Deputy Returning Officer, whose bounden duty it was to have protected the voter; and that he (White) was present within the polling booth only as agent of the respondent, and where he had any reason for doubt, his duty was to require the oath or affirmation to be administered, but not to deter the voter from taking it by the suggestion of a point of law as to the extent of a husband's right and interest in the wife's real estate. The only act of the Returning Officer was proper, the reading the oath to the voter. He ought to have gone further, and have forbidden Mr. White from interfering with the free exercise of the voter's judgment,

and, if necessary, to have removed him from the polling booth. I am not surprised, considering the several topics embraced in this oath, that an uneducated man, as Black seems to be, should on a single reading refuse to swear in its full terms. But if the Deputy Returning Officer had referred to the 41st section of the Act, he must have known that every person whose name was on the voters' list had a right to vote, provided that, upon being properly required, he took the necessary oath or affirmation. The statute does not sanction any questioning of the voter by a candidate or his agent in order to show that his name ought not to have been placed on the list.

But as I have come to the conclusion that Black did not vote because he really felt doubtful of his right to vote, and therefore was, as he says, "a little afraid," and as I have no reason to doubt that Mr. White (as he has sworn) really thought "the man had no right to vote, and had no intention to mislead him," I cannot find the respondent through his agent (I have no doubt as to the agency) guilty of undue influence by intimidation in this particular case. I have already said I think an improper course was pursued by Mr. White and the Deputy Returning Officer.

[The learned Chief Justice then reviewed the evidence as to the Robins' case (*ante* p. 284), and proceeded:]

I assume that the particulars gave the respondent notice that this charge would be advanced in order to unseat him. If this be so, and the conduct of the Robins' family afforded even indirect proof that they had made such an assertion from malicious motives or with a corrupt expectation, why was it not brought forward? or if the Robins' reputation for veracity would not bear investigation, why was that not made to appear? These and similar considerations, and the uncertain sound of an unsupported negative, or of an assertion of utter oblivion on some points and rather vague generalities upon others, are ill calculated to reject a charge sworn to pointedly and directly—a charge of a novel character, and attended

with consequences to which public attention has been but recently strongly drawn—in which ignorance might be more reasonably presumed in persons of the apparent station and knowledge of the Robins' family, but which I should not venture to attribute to a member of the House of Commons or of the Legislative Assembly.

I have felt that I could not avoid declaring the election of the respondent to be void on the ground that a corrupt practice, namely, that of bribery, has been proved to have been committed by the respondent himself in making an offer of money or valuable consideration to Christina Robins, in order to induce her to procure or endeavor to procure the vote of one Nathan Robins in favor of the respondent at the late election of a member of the House of Assembly for the county of Halton.

From this decision the respondent appealed to the Court of Appeal.

Mr. Blake, Q. C. (Attorney-General of Canada), and *Mr. Bethune* for respondent.

Mr. James Beaty, Q. C., for petitioner.

RICHARDS, C. J.—We do not think we can properly interfere with the decision of the learned Chief Justice as to the facts found by him, the general rule being that the finding of the Judge, who hears the witnesses when there is conflicting evidence, and the decision turns on the credibility of the witnesses, should prevail. He sees the witnesses, hears their testimony, observes the way in which they answer questions, and is in a much better position to decide on conflicting evidence than those who merely read the statements of the witnesses as they have been taken down. We are all of opinion that we ought not to interfere with the finding of the learned Chief Justice as to the matters of fact.

It was not urged before the learned Chief Justice that if he came to the conclusion that the respondent had offered to make Mrs. Robins a nice present if she would

keep her husband from voting against him, that this was not bribery within the meaning of the statute of this Province, 32 Vic., cap. 21, sec. 67.

The question is raised before this court for the first time ; and it is contended that there must be something named as the present to be given, or it will not be a promise or offer of a *valuable consideration* (within the meaning of the Act) to Mrs. Robins to induce her husband to vote or refrain from voting at the election.

It is not in terms an offer of money. Does it imply that something of *value* is to be given if the promise or offer is carried out ? and if so, is that not what is meant by a promise of money or a valuable consideration ? Not a promise of something which has no appreciable value, such, for instance, as to make a lady one of the patronesses of some exhibition, where no one was to receive any pecuniary benefit but all were to pay money ; or buying a ticket to admit a person to grounds on which a pic-nic was being held, where each person attending paid for or furnished his own lunch ; or to make an elector a member of an election committee, where he would receive no emolument, and would probably be compelled to labor, and might be subject to loss.

When this offer was made was it a mere pretence ? Are we to presume the respondent wished Mrs. Robins to understand, as she appears to have understood, that she was to receive a present of some value, when he intended to give her something of no value or no appreciable value ? This would be presuming a certain kind of fraud on his part, and in his favor to relieve him from what would be the consequence of his act, which I do not think that judges or courts usually do.

One of the earlier statutes on the subject of bribery, 7 Wm. III., c. 4, provided that no person to be elected to serve in Parliament " shall directly or indirectly make any promise to give any money, meat, drink, provision, *present*, *reward*, or entertainment to and for any person having a voice in the election, or for the use, advantage, benefit,

employment, profit or preferment of any such person in order to be elected to serve in Parliament.”

Our own Con. Stat. Canada, 22 Vic., cap. 6, sec. 82, provided that no candidate should directly or indirectly employ any means of corruption by giving any sum of money, office, place, *gratuity*, *reward*, or any bond, bill or note, or conveyance of land, or *any promise* of the same; nor shall he threaten any elector with losing any office, &c., with intent to corrupt or bribe any elector to vote for such candidate, or to *keep back* any elector from voting; nor shall he support or open any house of public entertainment for the accommodation of the electors. And if any representative returned to Parliament is proven guilty of using any of the above means to procure his election, his election shall be declared void, and he shall be incapable of being a candidate or being elected during that Parliament.

The above provisions were repealed, and the Legislature of Canada passed the statute 23 Vic., cap. 17. The first three sub-sections of section 1 of that Act define bribery in the same way as it is defined by the Imp. Stat. 17 and 18 Vic., cap. 102, and by sub-sections 1, 2 and 3 of sec. 67 of the Stat. of Ontario, 32 Vic., cap. 21. These provisions were in force when *Cooper v. Slade* (27 L. T. Rep. 137) was decided in England, and I suppose are still in force there.

The words of Baron Alderson, after giving the judgment in *Cooper v. Slade*, as reported in 27 L. T. Rep., 139, are: “I entertain this opinion also, whether the rest of the Court agree in it or not, that the words ‘money or other valuable consideration’ ought to be expounded, money or other valuable consideration estimable.”

In construing this statute, we must consider what was the intention of the Legislature; and there is no doubt the primary object was that votes should be given from the conviction in the mind of the voters and those who supported a candidate that he was the best person for the situation, and that the public interests would be best

served by electing him. The evil to be corrected was the supporting a candidate, not because he was the proper person, but for "*causâ lucri*." The supporting of the candidate because of personal benefit to himself; the exercise of the franchise not for the public good, but for personal gain in money or money's worth to the voter or the person inducing the elector to vote or not to vote, was what the Legislature wished to guard against.

Then what was the motive presented to the mind of Mrs. Robins, in the case under consideration, to induce her husband not to vote against respondent? It was that she was to receive some substantial advantage from it, either in money or property—something of value. She was to have a *nice present*. The evidence showed she considered it would be something of value—not of mere fanciful or imaginary value, but of real value that would be *appreciable*. What occurred would well justify her in supposing that the respondent intended to give her something of value, and that he intended to give her, in the language of the statute, a valuable (not a fanciful) consideration for inducing her husband not to vote; and she, entertaining that belief, tried to induce her husband to abstain from voting.

So that, in fact, the evil which the Legislature intended to prevent actually existed in this case. This woman was *corrupted* by the offer, and she endeavored to exercise an influence over her husband from the desire to get the *present* which had been promised her.

I understand when a corrupt promise has not been carried out, that the election Judges in England—to use the language of Mr. Justice Willes in the *Lichfield case* (1 O'M. & H. 27)—“require as good *evidence* of that promise illegally made, as would be required if the promise were a legal one, to sustain an action by Barlow (the person to whom the promise was made) against the respondent, upon Barlow voting for him, for not procuring or trying to procure him a place in the hospital.”

But I do not understand that the promise must be one for which, were it not prohibited by the Corrupt Practices Act, an action would lie for the breach of it. The *evidence* of the promise requires to be satisfactory, and, as far as we are concerned, that question has already been disposed of.

My brother Patterson has given me a note of some cases not referred to in the argument; the older ones show that as a matter of pleading it was necessary to show *what* was offered, and in that view would seem to go a long way in sustaining the view pressed upon us by the respondent, but the modern cases, under this very statute, are, I think, the other way.

I quote at some length the language of the learned Judge who tried the *Launceston Election Petition*, in which Col. Deakin was respondent. In that case (30 L. T. N. S. 823), Mellor, J., said in relation to the privilege granted by Col. Deakin to his tenants to shoot rabbits on the farms leased by them, "I cannot help thinking that it was to those tenants a valuable consideration, and *that the effect on the minds of these tenants* was that they had acquired by that concession a *valuable consideration*, capable of being represented by some money value. Of course I cannot estimate what money value, nor is it necessary that I should do so; it is only necessary that I should arrive at the conclusion that it was money or *money's worth*, and that the respondent considered that he was parting with something which was or might be in his hands a source of great enjoyment or pleasure, or otherwise, which he gives up to a tenant, and thereby destroys the effect of the reservation under which the tenant was formerly holding. I cannot help thinking, therefore, that it was a concession which had an appreciable value. . . . I must see that in construing the Act of Parliament intended to put down all corrupt practices and influences at an election, I am not narrowing by any construction of mine the effect of it, but am giving all proper effect to it. . . . The conclusion at which I have arrived is, that the giving of this concession

to the tenants, under the circumstances, was either a promise or a grant; *it was not a legal grant*, because that would require something more than a parol expression; *but when we are dealing with an election question, we must deal with the motives which are apparent*, and which appear from the Act itself. I cannot go into any intention of Col. Deakin. I must be governed by what he said, and by the inferences I ought to draw from *what he did and what he said*; and *by the inferences drawn* by those persons who were present, and who heard *what he did and what he said*."

Here it will be observed, that even had it not been for the Corrupt Practices Act, Col. Deakin could not have been by law compelled to make a legal grant of the right of killing the rabbits, and could not have been sued for any more than the promise made in this case; but nevertheless the promise was considered as equally corrupt. Other expressions, I think, warrant the conclusion that the apparent motives of the party, and the inference from the Act itself, should influence our decision.

My brother Patterson has also drawn my attention to the case of *Simpson v. Yeend* (L. R. 4 Q. B. 628). That was an action to recover a penalty for bribery, and it was virtually decided under the Imp. Stat. 17 and 18 Vic., cap. 102, sec. 2, sub-sec. 1, as I have already mentioned, similar to the section of the Provincial statute under which we are called on to decide the case before us. The promise to the voter was, "I said he would be *remunerated* for his loss of time." The learned Judge who gave the judgment, Mr. Justice Mellor, said: "We delayed giving our judgment at the close of the argument, not because of any doubt existing in our minds as to the answer which we ought to return to the question put by the Judge of the County Court, but because we were assured by the counsel for the defendant that the election judges had in their decisions upon the section taken a view differing from that which we were disposed to take. Had the fact been as suggested, we should not have felt ourselves

bound by the opinion of the election judges, unless upon consideration we had agreed with it, but we thought it desirable to ascertain what opinion had in fact been expressed by them with reference to a subject with which their duties had necessarily made them familiar. Upon inquiry, we find, as we anticipated, that those learned judges have expressed no opinion adverse to the conclusion at which we have arrived. Their observations upon this section, so far as it refers to an *offer* or *promise not accepted*, merely expressed a rule of prudence and caution as to the quantity and character of the evidence by which such an 'offer' or 'promise' should be considered as proved."

"We cannot doubt the words used, 'that the voter would be remunerated for what loss of time might occur,' did, under the circumstances, amount to an offer or promise to procure, or to endeavor to 'procure, money or valuable consideration to a voter,' in order to induce him to vote at the election in question. The expression 'remuneration for loss of time' would necessarily convey to the apprehension of the voter that if he would vote for a particular candidate he should receive, either directly from the person offering, or by his procurement, *money* or valuable consideration which he would not otherwise obtain; and any assurance of that kind, which can *only* be so understood, is calculated to operate upon the mind of the elector as a direct inducement to vote for such candidate."

After referring to *Cooper v. Slade* (6 H. L. C. 746), the learned Judge proceeds: "It is so important to the public interest that electors should be left free to vote without any disturbing influence of any kind, that we feel ourselves bound, in construing the statute in question, to give full effect to the plain meaning of the words used, and to apply them to the substantial facts of the case, *without raising subtle distinctions or refinements as to the precise words or expression in which the promise or offer may be conveyed.*"

Here we have no doubt that the words used did substantially convey to the mind of Mrs. Robins that if she used her influence, as the respondent wished her to, she would, in the language just quoted, receive money or valuable consideration which she would not otherwise obtain, and this was calculated to operate on her mind as a direct inducement to do what the respondent wished.

Our duty, then, is to give effect to this statute, though the consequences of our judgment to the respondent will be so very serious. We are not at liberty to fritter away by subtle distinctions an Act of Parliament. The same learned Judge whose language I have quoted above, Mr. Justice Mellor, in one of the recent cases decided last year, the *Bolton case* (2 O'M. & H. 144), uses the following language on this subject: "I take it to be the duty of a Judge to take care that he does not fritter away the meaning of Acts of Parliament by any subtle construction, but to give a bold (but at the same time cautious) decision, which shall further rather than defeat the object of any Act of Parliament of this character which he has to construe."

We are all of opinion that the judgment of the learned Chief Justice should be affirmed; that the Clerk of this Court should certify to the Clerk of the Legislative Assembly that the said respondent was not duly elected; that the said respondent was proved to have been guilty of a corrupt practice at such election, and that such corrupt practice was by promising to Christina Robins, the wife of Nathan Robins, if she would keep her husband from voting for Mr. Beaty at the said election, he would give her a nice present.

There is no reason to believe that corrupt practices prevailed extensively at said election.

We direct the respondent to pay the costs of the trial, of the petition, and of this appeal.

STRONG, J.—The question of fact argued on this appeal must, I am of opinion, be held to be concluded by the de-

termination of the learned Judge who tried the petition. It depended altogether on the credit to be given to witnesses who were examined before the Judge in open court; and there was, therefore, afforded to him opportunities of observing the demeanor of the witnesses, and of forming a judgment as to their truthfulness, which this Court does not possess. It is a principle well established in the procedure of appellate tribunals, including the highest court of the empire—the House of Lords—that questions of fact depending on the veracity of witnesses, and the credit to be given to them, are concluded by the finding of the Judge of the court of first instance, in whose presence the testimony is given.

This rule was acted on in this court in the case of *Sanderson v. Burdett* (18 Gr. 417), and in addition to that case and the authorities there referred to, I may mention the cases of *Penn v. Bibby* (L. R. 2 Ch. App. 127), and *Bull v. Ray* (28 L. T. N. S. 356) (*per* Lord Selborne, C.), and I would also refer to the judgment of Coleridge, J., in the case of *Reg. v. Bertrand* (L. R. 1 P. C. 535), who speaks of written as compared with oral evidence as “the dead body of evidence without its spirit; which is supplied when given openly and orally by the ear and eye of those who receive it.”

Taking the promise to be proved, as found by the Chief Justice, the case of *Simpson v. Yeend* (L. R. 4 Q. B. 626), discovered by the research of my brother Patterson, clearly shows that we must hold it to have been a promise or offer of “valuable consideration” within section 67, subsection 1, of 32 Vict., cap. 21, a conclusion to which, for reasons which I do not think it necessary to give at length, as they have been already stated in the judgment of the Chief Justice, I should have come, even if we had not had the satisfaction of knowing that our view was supported by the high authority of the English Court of Queen’s Bench.

In my judgment the appeal must be dismissed with costs, and the certificate should be as already indicated by the Chief Justice.

BURTON, J.—I fully concur in the judgments which have just been pronounced. The only difficulty I have felt is as to whether the words alleged to have been used come within the 67th section; but when one regards the mischief which the Legislature intended to deal with, and the words of our own Interpretation Act, which declares that every Act shall receive such fair, large and liberal interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit, it is impossible, I think, to come to any other conclusion than that this promise comes within it. To hold otherwise would open the door to every kind of ingenious evasion of the Act.

The Legislature has endeavored to put down an evil which prevailed to an alarming extent throughout the Province, and to meet every possible case of bribery or other corrupt practices; and we are bound, I think, to give full effect to the meaning of the language they have employed, without, as expressed in one of the cases, raising subtle distinctions or refinements as to the precise words or expression in which the offer or promise may be conveyed. A “nice present” must have been understood by both parties as something of value, and would convey to the mind of the party to whom it was made, that if the elector would vote for the candidate he would receive something, and could only be so understood.

PATTERSON, J.—The finding of his lordship the Chief Justice of this Court, that the respondent promised Christina Robins a nice present if she would procure her husband to vote for the respondent or to refrain from voting, is clearly supported by the evidence. After hearing the witnesses and seeing their demeanor, and testing the value of their evidence by a consideration of the circumstances which tended to give probability to the statement on the one side, as against the opposing evidence of the respondent, his lordship arrives at the conclusion that the charge is proved.

We are, it is true, to sit in appeal from decisions upon questions of fact as well as upon questions of law ; but this does not necessarily mean that we are to criticise the opinion formed of the witnesses by the Judge who sees and hears them. In many cases the finding of a fact depends not so much upon the credit to be attached to one statement as against another, or to the credit to be accorded to individual witnesses, as upon the proper deduction from facts which are not seriously disputed. On questions depending on such considerations, appellate courts frequently reverse the finding of courts below. Even where there is conflicting evidence, and where much may depend on the credit given to particular witnesses, the appellate court may, by the report of the Judge who hears the witnesses, be enabled to review his finding ; as noticed by Lord O'Hagan in the case of *Symington v. Symington* (L. R. 2 Sc. App. 424), where he says : " On the first question we have been fairly pressed by the argument, that the Lord Ordinary, who had the advantage of seeing the witnesses and judging of their veracity from their demeanor before himself, should not have his decision lightly set aside ; and undoubtedly the value of *viva voce* testimony can be much better ascertained by those who hear it than by those who know it only by report. But there is this peculiarity in the present case, that the Lord Ordinary has put us somewhat in his own position, and enabled us, so to speak, to see with his own eyes, when he states the impression produced upon him by the principal witness, and describes her as ' a girl of modest appearance, who gave her testimony generally with an air of truthfulness,' and he speaks favorably of her aunt, another witness, whose part in the transaction is of great importance. Besides, we are concerned directly, not with the judgment of the Lord Ordinary, but with that which overruled it, and the latter we ought to affirm, unless we are satisfied of its error." In the present case I can see no ground for arriving at a conclusion different from that of his lordship the Chief Justice, who gave credit to the Robins family

after carefully balancing the reasons for preferring their account of the transaction.

I have, however, had strong doubts whether the promise to make a "*nice present*" was an offer of "money or valuable consideration" within the meaning of section 67 of the statute. This point was taken by Mr. Blake in his argument before us, though not taken before the Chief Justice at the trial, and we were referred to a dictum of Alderson, B., in *Cooper v. Slade*, which is noted in the report of that case in 27 L. T. Rep. 139, and 2 Jur. N. S. 1020, though not in the report in 6 E. & B. 447. The report in the Jurist is: "Alderson, B., added: I entertain this opinion also, that the words 'money or other valuable consideration' ought to be construed to mean 'money or other valuable consideration to be estimated by money.'"

I have not seen any case in which any Judge or court has actually decided that any offer or promise which came in question, was not an offer of money or valuable consideration, except the decision in the Exchequer Chamber, in *Cooper v. Slade*, where it was held that giving money to a voter to pay his railway fare in going to vote was not giving money to induce him to vote. That decision was, however, reversed in the House of Lords (6 H. L. C. 746.) In the *Launceston case* (2 O'M. & H. 129, 30 L. T. N. S. 823), Mr. Justice Mellor held, that an offer by a landlord to his tenants of the privilege of shooting rabbits on their farms was bribery, because it was a valuable consideration, capable of being represented by some money value. If the question had been merely whether an offer of a nice present was an offer of something having some money value, I should not have hesitated much as to the correct decision; because I think there can be no doubt that such an offer would convey to the mind of the person to whom it was addressed, that something which was either money or money's worth was to be given. My doubt has been not as to *some value* being implied, but as to whether the words "valuable consideration," which are

technical words, should not, in construing the statute, receive the same construction as they would receive with reference to contracts.

The present statute takes the place of one in which the words were apparently of a more general character, viz., Con. Stat. Can., c. 6, s. 82, where the words used were "sum of money, offices, place, employment, *gratuity*, *reward*, or any bond, bill or note, or conveyance of land." Having regard to this change in phraseology, as well as to the fact that the words "valuable consideration" have a recognized meaning in law, it seemed to me that we ought to construe the clause as requiring such a consideration as would ordinarily support a promise; and that the offer now in question was too indefinite in its character to fulfil that condition.

The adequacy of the consideration for which a promise is made, is usually not a material inquiry, because parties may agree for what consideration they please; but where there is no agreement—where there is merely an unaccepted offer, and the adequacy is not, therefore, settled by consent—it would seem that a consideration which is entirely indefinite is not one which can be called a "valuable consideration," as we are accustomed to use the term. Thus a promise to forbear "*for a little time*," or for "*some time*," is too indefinite to constitute a good consideration for a guaranty (Chitty's Cont. 29, citing 1 Roll. Abr. 23, pl. 25), which doctrine is approved by Bramwell, B., in giving the judgment of himself and Watson, B., in *Oldershaw v. King* (2 H. & N. 399), and in the same case in the Exchequer Chamber by Cockburn, C. J., at p. 519 of the same volume, and it does not seem to be disputed by any of the Judges who gave judgment in that case; and in *Davy v. Baker* (4 Burr. 2471), a declaration in debt on 2 Geo. II. c. 24, which alleged in the words of the statute that the defendant did receive "a gift or reward," was held bad in arrest of judgment, for not specifying what particular species of reward was given. This case is cited by Patteson, J., in *Baker v. Rusk* (15 Q. B. 870), as estab-

lishing the position that the declaration must state the means by which the voter was corrupted.

The rule of construction, stated in *Lord Huntingtower v. Gardiner* (1 B. & C., 297), viz., that "it is not for us to say what might be politically desirable, but what is the provision of the Legislature, and that in order to answer that question we must resort to established rules for construing acts of this nature," seemed to me to make it proper to treat the section as I have indicated; and I do not say that that view is incorrect. But the judgment of the English Court of Queen's Bench in *Simpson v. Yeend* (L. R. 4 Q. B. 626), is so very much in point upon the construction of the English statute, with which ours corresponds, as in my opinion to govern the present case. The promise in that case was that the voter would be remunerated for any loss of time in going to vote, and there was no acceptance of the offer on the part of the voter. It was argued that the promise must be of something tangible, and that there was no promise which, if accepted, would, putting aside the illegality, have supported an action. The judgment of the Court was given by Mellor, J., who said: "We cannot doubt that the words admitted to have been used by the defendant, viz., 'that the voter would be remunerated for what loss of time might occur,' did, under the circumstances, amount to an 'offer or promise' to procure, or endeavor to procure, money or valuable consideration to a voter in order to induce him to vote (at the election in question). The expression 'remuneration for loss of time' would necessarily convey to the apprehension of the voter, that if he would vote for a particular candidate he should receive, either directly from the person offering, or by his procurement, money or valuable consideration which he would not otherwise obtain; and any assurance of that kind, which can *only* be so understood, is calculated to operate on the mind of the elector as a direct inducement to vote for such candidate." If any authority were required to induce us to adopt this view of the transaction in the present case, it

is supplied by that of *Cooper v. Slade* (6 H. L. C. 746), which upon this point is not distinguishable in principle from the present case. It is so important to the public interest that electors should be left free to vote without any disturbing influence of any kind, that we feel ourselves bound, in construing the statute in question, to give full effect to the plain meaning of the words used, and to apply them to the substantial facts of the case, without raising subtle distinctions or refinements as to the precise words or expression in which the promise or offer may be conveyed.

I agree that the judgment should be affirmed.

(9 *Journal Legis. Assem.*, 1875-6, p. 8.)

NORTH ONTARIO.

BEFORE MR. JUSTICE WILSON.

WHITBY, 13th to 15th May, and 20th June, 1875.

BEFORE THE COURT OF APPEAL.

TORONTO, 16th, 17th and 25th September, 1875.

WILLIAM McCASKILL, *Petitioner*, v. THOMAS PAXTON,
Respondent.

Treating at a meeting of electors—Disorderly crowd—Agency, and Law of agency—Township committees—Undue influence—Settlement of an old debt—Bribery—Penal statutes—Appeal.

A meeting of the electors was held at a tavern, at which both candidates were present. A dispute arose, and the meeting broke up and the parties left the room as a disorderly crowd, and began pulling off their coats and talked of fighting. A treat was proposed to quiet the people, and one F. (held by *Wilson*, J., to be an agent of the respondent), treated, and the crowd quieted down and dwindled away.

Held (per *Wilson*, J.), that the treating, under the circumstances, was not furnishing drink to a meeting of electors assembled for the purpose of promoting the election.

On appeal the Court, without expressing any opinion as to the treating, held, on the evidence, that F. was not an agent of the respondent at the time of the alleged treating.

One W., a voter, who was in arrears to the Crown for the purchase money of a lot of land, was canvassed by B., an alleged agent of the respondent, who told him that the Government would look sharply after those in arrears for their land who did not vote for the supporters of the Government.

Held (reversing *Wilson, J.*), that what occurred was a *brutum fulmen*, or an expression of opinion upon a subject on which every one was competent to form an opinion.

Acts of agency and the decisions bearing thereon, discussed.

A charge of bribery against the respondent, where the evidence was unsatisfactory and repugnant in itself, and rested more on suspicion than on clear positive proof, was held not proven.

One M. was a member of a township committee, organized by direction of the convention which nominated the respondent, and the work of the election was put into the hands of these township committees. M. canvassed his school section, and had a voters' list, which was taken from him by the committee on the allegation that he was not doing much. The respondent never asked M. to work for him, but M. asked the respondent what success he had. The respondent had no one acting for him except these committees and some volunteers, and he never objected to the aid they were giving him, nor did he repudiate their services.

Held, on the evidence, that the respondent was responsible for these committees, and that M., as a member of one of such committees, was an agent of the respondent.

One H., a voter, held a claim against the respondent, and M. above named, and another, for five years, which he had been endeavoring to procure payment of. When canvassed at the time of the election, he stated that if he did not get it settled he would not vote for the respondent. M. induced the respondent to give his promissory note to H. for the debt, but did not give the respondent to understand directly or indirectly that the note had anything to do with the election.

Held, 1. That it is always open to inquire, under statutes similar to the Election Acts, whether the debt was paid in accordance with the legal obligation to pay it, or in order to induce the voter to vote or refrain from voting.

2. (affirming *Wilson, J.*) That on the evidence, the motive which induced M. was that of procuring the voter H. to vote at the election, and that thereby an act of bribery was committed by M. as such agent, which avoided the election.

In penal statutes questions of doubt are to be construed favorably to the accused, and where the court of first instance in a quasi criminal trial has acquitted the respondent, the appellate court will not reverse his finding.

The petition contained the usual charges of corrupt practices.

Mr. Hector Cameron, Q.C., and Mr. N. F. Paterson for petitioner.

Mr. Hodgins, Q.C., for respondent.

The evidence is fully set out in the judgment.

WILSON, J.—The petition charged the commission of corrupt practices by the respondent himself, and by him through his agents.

I shall dispose first of the charges of treating, beginning with that which is contained under head of number four.

Number four relates to the act of James P. Foley. I may say at the outset I find him to have been a general agent of the respondent, and if the act he did is against the 61st section of the Election Law of 1868, there will have to be treating found to have been practised of a nature sufficient to avoid the election. Did he then provide drink or other entertainment at his expense "to any meeting of electors assembled for the purpose of promoting such election," at the time in question?

The facts were that the respondent had called a public meeting at Birney's tavern, on New Year's Eve; there was a large attendance; both candidates were there, and many of their supporters. After a few persons had spoken, Foley took the platform to explain the facts relating to some local matter, which he conceived had been spread about to his prejudice. He was called upon to name the person to whom he alluded; he did so. The lie was exchanged between them, and the whole meeting got up. Mr. Paterson (a supporter of the opposing candidate, McCrae, and the solicitor for the petitioner) applied to David M. Card, the principal agent of the respondent, if it would not be better to close the meeting. Card said he thought not, and the people soon quieted after that. As Paterson was speaking, Donald Bruce, a supporter of the respondent, called out "that's a lie," and a general call was made to turn Bruce out, and he was thrust out, and shoved down upon the ground. Those at the meeting then jumped up and talked of fighting, and there was a great disturbance, and a general rush to the door, and parties began pulling off their coats. The meeting was broken up. Christopher Moore said it was about ten at night when he got to the meeting. When he was within 75 yards of it he heard an awful noise. He tried to get in, and was told not to go in, he would get killed. There was no meeting there; it was fighting. He then proceeded: "I got on a bench and called to the people to come to me; that it was a shame to fight for Paxton and McCrae, who would not fight for them; that it was far better to

shake hands, have a drink, and go home. Liquor was brought on; I did not pay for it. Mr. Paterson, Dr. Fair (who was the person named by Mr. Foley), and others, said it was a good thing I was there, for if I had not been there some of them would have been out of the window. Some of them were awfully frightened. I thought it was a regular *melee*, and a Donnybrook. When I began speaking the row ceased. I was there an hour or so, and when I came away half of the people had gone off. What I did quieted the disturbance; if I had not done what I did, there would have been a breach of peace. I am sure McRae drank there; he went up to the bar to drink; I never was asked to pay for the drink"—the meeting having been broken up, and the people being about there in the excited condition spoken of. The part which Foley took in it he stated as follows:

"There was a disturbance that night at the meeting. One of Mr. McRae's friends proposed that he and I should join in a treat of all hands. I refused; I said if I treated I would treat all hands. I did so. There may have been about 30 or 40 persons. I treated all alike—Paxton's and McRae's friends all alike. [He paid for an oyster supper then which he had with a few friends.] I paid \$4 that night for supper and for treating; that was the principal sum I paid; but I spent some smaller sums."

The meeting at Birney's was broken up, and parties had left the room. The row continued after the meeting was over, and it was then proposed to treat all hands, to quiet the people, as is usual on such occasions. It was not done to promote the election; both parties drank. Moore said to the people if they would hold their tongues and vote for him he would treat them all; and he did. That was to make peace. The crowd quieted down, and dwindled away.

I think it would be quite unreasonable to say that the treating at that time, and under the circumstances, by Foley, the agent of the respondent, was a treating of a "meeting of electors assembled for the purpose of

promoting such election." It was done for a different purpose, and participated in by both parties, to restore harmony and to induce the people to go home quietly; and it fully answered the purpose, and prevented bloodshed, and it may be—for no one can tell to what extent the violence of excited men may be carried—it may have saved life also.

It was no more a violation of the statute than the impromptu suggestion of the successful candidate to give a glass of champagne to his supporters in place of having a public procession, which he feared might lead to a disturbance, and giving it to about 200 of his friends, was a violation of the statute in the *Huddersfield case* (14 L. T. N. S. 345). And I need scarcely say that the committee did not hesitate to pronounce that the treating upon that occasion was not an act which was contrary to the statute. I have no doubt of that; I only regret that I am obliged to explain so fully the reasons which led me to form the opinions I came to in these election cases.

The third charge is the alleged act of intimidation by Donald Bruce, who is alleged to have been the authorized agent of the respondent, towards George Wharen. Wharen said Bruce called on him three times about voting; the first time about a week before the polling day, the second time about three days before it, and the third time upon that day. He said on the first visit that McRae was no good; Paxton would do the most for poor people. On the last visit he asked Wharen if he had made up his mind who he was going to vote for. "I said, not for Paxton. He said if I did not go down and vote for Paxton I had better stay at home. I said I did not know that. He said if there were favors I wanted from the Government Mr. Paxton was the one to get them for me, as he had a great deal of influence in the Crown Land office. I said I would not vote for Paxton; if I voted I would vote for McRae. He said to me I would have to look out, for those who don't vote for the supporters of the Government, and are in arrears for their

land, the Government will look sharp after them, and they will very likely lose their land. I said I would go down and vote for McRae just for that speech."

In cross-examination he said, "I could not say whether the Government would injure me for my vote; at that time I had doubts about it, based upon the newspapers. I know no one in my position injured by the Government for his vote. I should not think Paxton nor any man would injure me about the vote. I have no doubt one way or the other about what was said, but I was vexed at it. . . . I suppose what Mr. Bruce said was what he called giving good advice to people; he speaks rather hasty sometimes. The words hardly sounded like advice in my mind. I don't know what they sounded like to him." In the examination he said he then lived on a Crown lot, and there were arrears due upon it. His wife confirmed her husband's statement of the conversation.

Donald Bruce said as to Wharen: "I canvassed his vote eight or ten days before polling, and also on the morning of polling; the first time he had not made up his mind. On the morning of the polling he said he was going to vote for McRae. I said he might vote as he liked, but I thought he should vote for a man who supported the Government when he was in arrears for his land. I did not say the Government would watch him, nor that the Government would come down on him. I did not threaten him. I advised him only it was better to support a man who supported the Government."

I am disposed to think, and the conclusion I may say I have come to is, that Mr. Bruce, who said "I always work in elections," said what is said by Wharen and his wife. The evidence of the wife was very convincing; for although she said no more than her husband said, her manner assured me she was narrating an actual occurrence, and just precisely as it had taken place. The husband's evidence was given also very satisfactorily in every way; but I refer to the wife's manner as a witness, because it was especially calculated to induce a belief in the

correctness and simplicity of her story. The facts must have been impressed upon her attention, because she said "I was alarmed at first about the words." I do not say I disbelieve Mr. Bruce. But as a partizan he may, as he seems to have taken great pains to secure this vote, have said more than he intended to have said, or than he thought he had said, and that which may not have impressed him as anything very unusual or very serious—as he was not a debtor to the Crown for the land he lived upon, and was a strong political supporter of the candidate he favored—may have operated, and undoubtedly did operate, very differently upon this voter and his wife, who were not greatly taken up with politics, and whose land had not been paid for when, according to Bruce's own account, the husband was reminded of the fact, and was told how he might be affected in such a case if he gave his vote in a different way from the way in which Bruce wanted him to vote.

I think that Bruce supposed his reference to the situation of this voter would have some effect upon him, and that he intended it to have the effect of getting him to vote for Paxton.

The reference to the government power, and position as a creditor, was a most improper act on the part of Mr. Bruce, who is an intelligent, wealthy man of good social standing, and of good reputation in his neighborhood, and was one calculated to alarm a plain man like Wharen, especially as Wharen intimated rather than fully expressed he had seen a great deal in the newspapers of persons having influence with the Government giving the Crown Land debtors great trouble by procuring valuations and re-valuations to be made of their lands, and showing favor to them who supported the Government candidate, and dealing harshly with those who opposed the Government. It may be that all these are scandals, and we would much rather believe them so ; for anything impeaching the good faith and justice of the Crown to all alike, without regard to creed or politics, or color or caste,

is repugnant to every notion we have ever believed to be the principle and only rule of action of our Government.

Finding the fact of intimidation to have been practised by Mr. Bruce upon or against George Wharen in order to induce or compel him to vote for Mr. Paxton, or to refrain from voting for McRae, the law declares that such act shall be deemed undue influence and a corrupt practice, subjecting the person guilty of it to a penalty, and avoiding the election if the act can be charged personally against the successful candidate, or upon his duly authorized agent. The question then is, was Mr. Bruce the duly constituted authorized agent of Mr. Paxton, so as to make him liable for this act of Mr. Bruce.

The facts, as applicable to this part of the case, are: Mr. Bruce lived in Beaverton; he worked for Mr. Paxton. During the election he was at the Reform convention as a spectator. When he was there he was appointed a delegate for Rama, as none of the Rama delegates were present.

Mr. Paxton was at the meeting, and he was then nominated a candidate. He continued, "It is likely I spoke to Paxton; I did not offer to support him; it is likely he expected I would support him. I always work in elections; I was not on any committee; I attended committee meetings. . . . I saw Paxton during the canvass. He knew I was working for the cause, and I was a strong supporter of his, and that I was working for him too. Paxton did not attend the committee meetings in Thorah; I don't know that he knew of such a committee. At the committees men are appointed to canvass; I was not so appointed; I did what I could. I made no report of what I was doing to the committee. Paxton did not ask me, to my knowledge, how people were going to vote. I may have spoken to Paxton twice during the election. I was at the meeting of Paxton's at Birney's hotel."

In cross-examination: "I was not appointed by any committee, or by any party to work at the election." What-

ever I did I volunteered, and did of my own good will. I never canvassed with Paxton."

Re-examined: "At Brechin, Paxton told me not to do anything to avoid the election. Some persons were wanting money from him to treat; he would not give it. He said he did not want anything done by anybody to avoid the election. What Paxton said about not wanting anything done to avoid the election was said to seven or eight of us."

That is his evidence, excepting as to what has been given already relating to Wharen's vote.

Charles Robinson said he was the president of the Reform Association at which Mr. Paxton was nominated. He thought it was probable a resolution was passed to support Mr. Paxton. It was understood all parties would support him, but he was not sure there was any resolution. There was a branch of the Association in Thorah, and he thought a special committee was appointed in the township for election purposes. He attended some of the meetings. Thinks he saw Bruce at two of its meetings. Could not say if Paxton knew there was a committee in Thorah. That committee looked over voters' lists, and got the views of parties as to how they would vote. It is likely Bruce talked of such matters, but could not say he did. He would be likely to have something to say of such matters. Bruce is active; some say more active than discreet. The Thorah committee was a voluntary committee of Reformers. It was made up by the Reformers for their own purposes. Paxton had nothing to do with appointing it. I attended the meetings as a friend of the cause. Paxton had nothing to do with the committees. He held public meetings, and canvassed the electors at these meetings by his speeches. I know of no connection Bruce had with the election, excepting that he was a volunteer, and worked for the cause.

Adam Gordon said, "Mr. Paxton took all opportunities, whenever it could properly be brought up, to caution people not to violate the law. I did so for him particularly

at the convention which chose him, that in governing their sub-committees they should be careful to see that the election was carried on properly, and that no rash friends should do anything to hazard the election. Mr. Paxton was present at the convention, and spoke shortly at it. I don't think Paxton took part in forming committees or in attending them, there was so little time. The formation of committees was spoken of at the convention. It was urged upon the delegates to see that their sub-committees were put into proper working order. The work of the election was put into the hands of the township committees. I only knew of the formation of the Port Perry committee; Mr. Bigelow, I suppose, organized it. We heard there were other committees." The evidence shows positively there were committees in the respondent's interest in Mara, Thorah, Reach, Port Perry, and, as David M. Card thinks, in Uxbridge also; there may have been committees formed in his interest in other places, but it was not shown by evidence there were.

Keeping in view that the inquiry is as to the agency of Donald Bruce, it is to be considered what facts are relied on by the petitioner to show that agency. Bruce was a delegate, named at the convention which nominated Mr. Paxton as a candidate in the Reform interest, on which side Bruce takes an active interest. He canvassed in this election to some extent, and particularly the elector George Wharen, on behalf of Paxton. He was a zealous assistant, and, as he said, he always works in elections. He was not, however, appointed by the committee to work, and he did not report to the committee what he did. He attended at two, at least, of the committee meetings in Thorah, but he was not a member of the committee. Mr. Robinson says Bruce would be likely to talk of the work at the committee-room. Paxton knew Bruce was working in the cause, and was a supporter of his, and that he was working for him too. Bruce did not canvass with Paxton, and he says he acted throughout as a mere volunteer. He attended one or more of

Paxton's public meetings. He was told with several others, by Paxton at Brechin, not to do anything to avoid the election.

Then as to the committees. Mr. Paxton was nominated by the Reform Convention at which he was present.

It was there mentioned that, in forming these sub-committees, they should be careful to see the election was carried on properly. The delegates were urged to put these sub-committees into proper working order. The work of the election was put into the hands of the township committees. There was a branch of the association in Thorah, and a special committee was appointed in Thorah for election purposes. That committee was said to be a voluntary association of the reformers there for their own purposes. And there were various other committees in the riding in the respondent's interest; the one at Port Perry being presided over by the respondent's partner, Mr. Bigelow, and at which Mr. Card, the respondent's general agent, was present on one occasion, and it is at Port Perry where the respondent resides. The question of agency depends upon the three inquiries:

1. Was Donald Bruce an agent of the respondent, by authority direct or implied, for the respondent himself? If he were not, then

2. Was the Thorah committee a body for whose acts the respondent is responsible? If it were, then

3. Was Bruce appointed by, or acting under the authority of the committee?

All the cases show, and common sense requires, that authority from the alleged principal, the candidate, must be shown creating or sanctioning a person to be his agent before the candidate can be made responsible for the acts of such person.

The authority need not be expressly conferred. It may be inferred to have been given by various acts of the alleged agents in the interest of the candidates under certain circumstances, and it is the circumstance which gives rise to all the difficulty of determining whether

they are or are not sufficient to raise a just presumption that the candidate has recognized and adopted the acts of the person assuming to represent him.

A large allowance is and must be made for the services of friends and volunteers who are acting for the sake of the cause which the candidate represents, and without any pretence of authority from, or any recognition by him, for, or of the performance of these services.

The candidate may know his friends and others are working for him, and yet it is not clear he is answerable for what they do, although he does not in every case repudiate their acts and services.

I shall refer to some of the decisions upon the subject. They are the opinions of able, disinterested men, and I think it will appear on a perusal of them, that while administering the law in so difficult and delicate a branch of it with the most perfect impartiality, there is a general desire exhibited not to press the law more severely than they are compelled to do, to require strong proofs of the alleged illegal acts, to give the benefit of all reasonable inferences in doubtful cases to the persons charged, to make allowances for the acts and sayings of people during such exciting times, by not putting the harshest construction upon them, to require full and fair proof of agency before accepting it as established, to allow much latitude for the zeal of supporters of the candidate, without holding him to be answerable for their conduct, although he is getting the benefit of their services, and generally to uphold the election if it can properly be done.

One who visited voters, and made appointments for them to see the candidate, and who afterwards introduced them to the candidate, was held to be an agent. *Bewdley case* (19 L. T. N. S. 676). In the same case (1 O'M. & H. 17), Blackburn, J., said: "Every instance in which it is shown that, either with the knowledge of the member or candidate himself, or to the knowledge of his agents who had employment from him, a person acting at all in fur-

thering the election for him in trying to get votes for him is evidence tending to show that the person so acting was authorized to act as his agent."

One who is on a committee, who attended its meetings, who canvassed, and whose canvassing was recognized, is deemed an agent. *Westbury case* (20 L. T. N. S. 16). Asking an employer of workmen for his vote and interest may mean, "Go round and canvass your workmen for me," and may create an agency (s. c., 1 O'M. & H. 47).

A supporter of the candidate gave a feast to his friends on the polling day. He twice canvassed with the candidate; he had a list of the voters on Lanivet, given by an agent of the candidate, although given to him only on great pressure; he brought people to the polls; he had no canvass book. Held, these facts were evidence of agency. *Bodmin case* (20 L. T. N. S. 989).

A supporter gave a public breakfast on polling day. He provided vehicles to carry voters to the poll. The candidate, on election day, wrote and thanked him for what he had done. Held, that went a long way to establish agency; but it was not conclusive. *Hereford case* (21 L. T. N. S. 117). It was also shown that the same supporter was seen canvassing with A., a recognized agent of the candidate. Held, that that additional fact, with the other acts above mentioned, was not conclusive proof of agency. But it was further proved that the committee-men had brought voters to the breakfast, and that A., the recognized agent, had spoken of the supporter, after the election, as having done much good service. Held, that all these acts together so connected the supporter with the candidate as to make the one liable for the acts of the other (s. c., 1 O'M. & H. 194).

Employing a person to act for the candidate on the candidate putting himself to some extent in the hands of that person, or the candidate allowing that person to make common cause with him to promote the election, is evidence of agency. *Taunton case* (2 O'M. & H. 66).

A person upon a committee, but not shown how he got there or what he was to do, who wrote a letter offering to pay the voters' travelling expenses, was held not to be an agent. The Judge, Bramwell, B., said: "If we were to hold this man to be an agent it would make the law of agency, as applicable to candidates, positively hateful and ludicrous." *Windsor case* (2 O'M. & H. 88, 31 L. T. N. S. 133). In the following case the same Judge said: "Mr. Dawson attended the respondent's committee, he said as many as twenty times. He was also present at the committee, and on the day on which he bribed the voter he was busy in getting up voters who required particular attention. I should have thought that itself was enough, if he was to use anything, either solicitation or persuasion, to them." But not if he were only to bring them up and to use no influence with them. *Durham case* (2 O'M. & H. 134).

A candidate will not always be answerable if he accept the services of a volunteer. *Staleybridge case* (20 L. T. N. S. 75). A candidate is not obliged to repudiate volunteer services (s. c., 1 O'M. & H. 70); *Taunton case* (2 O'M. & H. 66); *Hereford case* (21 L. T. N. S. 117).

A mere volunteer cannot hurt the candidate. Mellor, J., said: "You must show me various things. You must show me he was in company with one of the principal agents, who saw him canvassing, or was present when he was canvassing, or that in the committee room he was in the presence of somebody or other acting as a man would do who was authorized to act. In putting all these things together, you satisfied me that the man was a canvasser with the authority of the candidate's agent; then I do not look with nicety at the precise steps, but that must be something of that character." *Bolton case* (2 O'M. & H. 138).

In the *Londonderry case* (21 L. T. N. S. 709), P. was appointed by the Liberal Registration Society to conduct the business of the revision, which shortly preceded the election. The candidate subscribed liberally to the funds

of the society, and approved of P.'s appointment. The staff of the society, with P. at its head, was afterwards used in promoting the election. The committee of the society directed in a great measure the meeting of the electors, and the candidate on one occasion communicated directly with P. by letter with reference to the election. Held, P. was an agent of the candidate.

In the same case (1 O'M. & H. 274), O'Brien, J., said: "I cannot concur in the opinion that any supporter of a candidate, who chooses to ask others for their votes and to make speeches in his favor, can force himself upon the candidate as an agent, or that a candidate should be held responsible for the acts of one from whom he actually endeavors to dissociate himself."

In the *Norfolk case* (1 O'M. & H. 236) a landlord was asked by the candidate's agent to be one of the committee. He declined, but said he would answer for his tenants; he spoke to them and reported the result. Held, he was an agent as to them. Blackburn, J., said: "The real governing point was that he was put forward and consented to be the person upon whom they relied to get those votes." The landlord had not in that case used any undue influence.

The following cases relate more particularly to committees or similar organizations.

In the *Westminster case* (1 O'M. & H. 92) Martin, B., defined a committee to be a limited number of persons in whom faith and confidence were placed by a candidate, and between whom there was some privacy. The same idea is a little differently expressed in the same case, in 20 L. T. N. S. 238.

In the *Staleybridge case* (1 O'M. & H. 70), Blackburn, J., said: "As a general proposition, that (*i.e.*, a person employed by the candidate to canvass and get a vote was an agent) would go a great way towards saying who is an agent; but I don't think we can take it as an absolute hard and fast rule on which we can say that whenever a case of corruption has been brought home to a person who was

within this limit, the seat should be vacated. The effect of that would be to say that whenever there were volunteers who were acting at all, and whose voluntary acting was not repudiated by the candidate or his agents—whenever, in fact, a person came forward and said, ‘I will act for you and endeavor to assist you,’ and the candidate or his agent said, ‘I am very much obliged to you, sir’—any corrupt or improper act done by that volunteer, although unconnected with the member, would render the election void. To lay down such hard and fast rules as that would at times work great injustice. At present I cannot go farther than to say that each case must be considered upon the whole facts taken together, and it must be determined in that way whether the relation between the person guilty of the corrupt practice and the member was such as to make the latter fairly responsible for it.” “But in such a case, where I am convinced that they were *bonâ fide* volunteers acting for themselves, not selected by the member nor chosen by him at all, but really *bonâ fide* and in a business-like manner, the voters of the district choosing sober and respectable men in whom they had confidence, to be the head of their own department, and acting together, a messenger who was sent by one of them is not so directly connected with the candidate, or any of his recognized agents, as to make him responsible for the misconduct in offering a bribe.”

In the *Westminster case* (20 L. T. N. S. 238), an association was formed with the view of supporting certain political principles. A candidate subscribed to the association, and had been its president, but resigned before his candidature commenced. He was selected as the candidate to be supported by the association, and thereupon many members of the association canvassed for him. These canvassers acted independently of the candidate’s canvassers, and uncontrolled by his committee. The candidate’s canvass agent, by request of the secretary of the association, furnished him with copies of the canvassing books. And it was held by Martin, B., that the members

of the association, canvassing voluntarily as above described, under the association though on behalf of the candidate, were not agents of the latter.

In the *Blackburn case* (20 L. T. N. S. 823, 1 O'M. & H. 198), a circular was issued by a Tory meeting; the circular was signed by persons, some of them connected with the Registration Society for the Tory candidate, or by persons upon the election committee, and also by the respondent's son. The election generally on that side was conducted in accordance with the circular, and Mr. Justice Willes held the circular had been adopted by the sitting member, and that the association which issued it was adopted also in view of a committee for the management of the election, and made every person mentioned in the circular agent for the candidate. *Dublin case*, (1 O'M. & H. 270).

In the *Wakefield case* (2 O'M. & H. 102), Mr. Justice Grove said: "It was proved that the respondent was vice-president of a certain society, that he spoke at meetings of it; that many members of it were active partizans of his, and were actively canvassing for him. That there were certain rooms belonging to the society, which might, in one sense, be called committee-rooms, but which were not so in the old sense of being occupied by a certain fixed committee. These rooms were placarded with the respondent's name, and at them business connected with the election was transacted. These facts would *primâ facie* bring the case within the law of agency, and would be sufficient to satisfy a tribunal that the respondent had put himself, or allowed himself to be in the hands of certain persons, or had made common cause with them, so as to make him liable if they, for the purpose of promoting his election, committed acts of bribery."

In the *Shrewsbury case* (2 O'M. & H. 36), Channell, B., said: "There may be a central committee; placards may be issued from it in the course of the election, signed, not by the candidate, but by some person representing him. These are acts which go beyond the mere act of canvassing."

In the *Limerick case* (1 O'M. & H. 262), Mr. Baron Fitzgerald said: "If the clergy make the cause of the candidate their own, and give him the benefit of having what may be equivalent, in its effect upon the election, to a committee-room conducted by themselves in every parish, they being the canvassers; and if it then turns out at the time of the election that the candidate represents his cause as identical with that of the clergy, and publicly gives out that the question between him and his adversaries is whether the clergy shall be put down or raised up, and is accompanied by them through the streets canvassing; if that be so—although the particular clergyman of the parish be not the party who accompanied the candidate in canvassing—I, for my part, will doubt long before I say the candidate is not, as far as his seating in Parliament is concerned, responsible for the acts of those parties in their several districts or parishes."

In the *Taunton case* (21 L. T. N. S. 169) there existed in the town a Conservative and a Liberal Association, each of which generally promoted the return of its own candidate, and assisted the registration of its own supporters. The managers of the Conservative Association having circulated addresses and papers issued by the candidate, will be presumed to have done so with his knowledge, or with that of his agents, so as to constitute the association agents of such candidate, and to make him responsible for any illegal acts of its managers. Blackburn, J., said: "We have it that the body are acting as canvassers for Mr. Cox—actively acting in promoting the election; and that fact, I think, we must fairly take it was known to him and his people. Now, does that, without any more, raise a *primâ facie* case which would call for an answer? I think it does. I think when it appears that things are done openly in that way, which in the ordinary course of things would not be done except with the cognizance of a candidate who sanctioned them, the fair and natural inference, in the absence of proof to the contrary, would be that they were done by a person acting

as agent for the candidate. I am very far from thinking that that evidence would be conclusive. I think it was quite open to Mr. Cox himself, and his agent, to have been called to show that they had no communication with that body; that they repudiated it; and if that repudiation were *bonâ fide*, they would not certainly be responsible for their acts. The candidate may show that the body was acting officiously for him, as I may call it; that it was not with his consent, and was against his will; but the presumption does arise, I think, that it was done in his favor—done for him, unless there was something to show the contrary. I think in this case such a degree of benefit would be derived from their assistance—that their assistance was so important to the candidate—that it fairly established this, that if he took their assistance, and did not hold them off or repudiate them, he must take the consequences, and be responsible for their malpractices.”

In the *Taunton case* (1 O'M. & H. 185), Mr Justice Blackburn said: “I think all one can do is this, to say that whenever a person is in any way allowed by the candidate, or has the candidate's sanction to try to carry on his election and to act for him, that is some evidence to show that he is his agent.”

In the *Galway case* (2 O'M. & H. 199), Mr. Justice Lawson said: “I think Mr. Justice Grove has given an admirable definition of it in a late case, in which he says the candidate is responsible, generally, for all those who, to his knowledge, carried on the purpose of promoting his election.”

In looking over the different cases to which I have referred, it appears to me that the *Staleybridge case* (1 O'M. & H. 66) and the *Taunton case* (1 O'M. & H. 181) are very seriously opposed the one to the other.

The former exempts the candidate from all responsibility for the acts of persons or committees whom he does not appoint, and who act voluntarily for him, even although he knows they are acting for him, and he receives their services, and it holds that he is in no case

bound to repudiate them. The latter case is quite opposed to it, because it is based upon this, that if the candidate knows that material services are being rendered for him, he must disclaim them and the persons giving them, if he wishes to be free from the consequences of their proceedings.

And both cases were decided by the same able Judge, Mr. Justice Blackburn.

The *Limerick case* (excepting in an important particular, certainly, the fact of the candidate canvassing with the clergy) agrees in one respect with the *Taunton case*, last referred to, that the candidate identifying his cause with the clergy, and taking the benefit of their services, is bound by their acts.

It appears to me also that the *Westminster case*, decided by Mr. Baron Martin, is not in accordance with the *Blackburn case*, decided by Mr. Justice Willes, and the *Wakefield case*, decided by Mr. Justice Grove.

I cannot do better, after reading most of the law on the subject, than accept as my principal guide as to what will constitute agency, the rules of Mr. Justice Grove in the *Taunton case*, and inquire whether the candidate or his agent did employ the person whose conduct is impugned to act on his behalf, or did to some extent put himself in such person's hands, or did make common cause with him for the purpose of promoting the election; and in the *Wakefield case* (2 O'M. & H. 200), when the same learned Judge uses the like language of the candidate placing himself or allowing himself to be in the hands of certain persons, or making common cause with them.

And I think I ought to adopt the ruling of Mr. Justice Blackburn in the *Taunton case*, in determining whether the acts of Donald Bruce, under the facts detailed, made him the agent of the respondent, or made the Thorah committee the agents of the respondent, and Donald Bruce the agent of the committee. The *Bewdley case* (1 O'M. & H. 17) may also be relied upon, and some of the others before given.

Looking at the facts before mentioned, relating to the conduct of Donald Bruce, can he be held to have been the agent of the respondent within the effect and operation of the law, so as to subject the respondent to the consequences of Bruce's act, in his dealing with George Wharen as to his vote? I am disposed to think that Bruce must be considered to have been such agent, judged by his conduct before stated, and the knowledge the respondent had of his services in promoting the election.

The respondent, according to the evidence, had no persons or bodies of persons acting for him in canvassing, securing, and bringing up voters, excepting these committees, and those private friends who are called volunteers. The whole management of the election was in their hands. The respondent was receiving, and knew he was receiving the active aid of Mr. Bruce and others like him. He never objected to the aid they were giving him. He did not repudiate it, nor tell them they were acting officiously, and busying themselves when they were not wanted. He knew there was a risk in what they were doing, because he cautioned them as to their conduct; and I do not know how else to deal with Mr. Bruce than to hold him as an authorized and competent agent of the respondent, to bind him by what he did in and about the respondent's business.

If Mr. Bruce had been acting zealously in the private affairs of the respondent, as for instance in calling upon the debtors of the respondent and receiving payment from them of their accounts, and the respondent became aware of it, and told him to be careful he did not do anything to his, the respondent's, prejudice while he was so acting, could it be said, although in one sense Mr. Bruce might be called a volunteer, that Mr. Paxton was not bound to give credit to his debtors for the money which they had paid on his account for Mr. Bruce.

The act of Mr. Bruce with respect to Wharen was committed after all the above acts he had done for the respondent, and after his conversation with him, for the

interview with Wharen was on the morning of the polling day. I am also of opinion that Thorah township committee must be considered to have been the agents of the respondent for the purposes of the election. The reasons I came to that conclusion are before fully set out.

I must assume the respondent, as well as his agent, Mr. Card, knew of the Port Perry committee, and of the others also of which Mr. Card had knowledge. And I must assume from the above facts, relating to what was said at the convention as to the formation of these committees, and that they were to have the general management of the election, that he knew also of the organization of the Thorah township committee, which is the one with which Mr. Bruce is said to have been connected.

The like rules and principles upon which I have been obliged to hold Mr. Bruce to have been the agent of the respondent, equally oblige me to hold that the Thorah committee were the duly authorized agents of the respondent. Holding that as proved, was Mr. Bruce also the agent of the committee?

I am not fully satisfied he was. He was not a member. He was not deputed by them to do anything. It is not shown that they knew what he was doing. He never reported to them. His attendance there twice may have been merely to talk over matters, and to give them such information as he was possessed of. These circumstances will not warrant any act of delegation of powers by them to him, nor of any acceptance of his acts by them.

In the *South Ontario case (post)*, I came to a different conclusion with respect to this question of agency of the Oshawa committee. I gave too much effect to the services of committees, and of the members of them, and of others acting for the candidate, and to his knowledge, and apparently with his consent and approval, by holding them to be volunteers, and by exempting the candidate from accountability for the acts of such bodies and of such persons. I have since reconsidered the opinion I gave in that case, and I think the first impression I had on it, that

the respondent was answerable for some of the acts for which I held him not responsible, was the correct one, and the one I should have adopted as my judgment. I expressed the opinion which I delivered, as I then mentioned, with much doubt, and I stated also that I should be glad to have the decision reviewed by the full Court, and I am glad it has been put in a course for reconsideration.

The doubt on the subject which I then felt, required that I should give it in favor of the existing state of things in support of the election and return, rather than against them. But I may say if I had judged of the matter then as I do now, I would have been obliged to avoid the election for the giving of liquor by Mr. Thomas at Hallett's tavern to voters during polling hours, contrary to the 66th section of the Election Law of 1868. Although it was not in any manner corruptly given, such is the stringency of the statute. I do not say the candidate is responsible for all volunteers; but I think he is if he knows of their acts in his interest, and he permits them to go on without disclaimer.

He cannot take the benefit of their acts, knowing of them and accepting of them without repudiation, and escape the consequences resulting from, or connected with them.

If it was otherwise there might be a dozen committees, and a legion of private friends all canvassing and, it may be, treating and bribing, and by such means securing the election of their candidate, and, it may be, their nominee, and he would hold it, however clearly these practices were proved, merely because they were all volunteers, and the candidate had never appointed any of them, or expressly or openly identified himself with them, and because it was said they were fighting for the cause, and not for the candidate who represented it.

In this case it is quite manifest the respondent had no organization of any kind but his public meetings, and it was notorious the whole business of the election was permitted to be in the hands of the branch Reform Associ-

ations and the township committees, and in those of private persons, of whom Mr. Bruce was, in my opinion, and to the knowledge of the respondent, certainly one. I find the third charge to be sustained against the respondent.

The remaining charges on personal grounds are pressed against the respondent. The first one is the alleged bribing by the respondent of Nichol Leppard. [The learned Judge here reviewed the evidence, which showed that up to the polling day Leppard was hostile to the respondent on account of some difficulty he had about a lot of land, and then proceeded:]

In every way I look upon Leppard's evidence as unsatisfactory and unreliable. It is repugnant in itself, and it is directly contradicted in some respects. I see, however, the great fact that Leppard, having pledged his vote to McRae, changed round immediately upon the conversation with Paxton, and that conversation was admittedly about this land, and Leppard's grievance against Paxton. How was that change brought about? In my opinion there is strong reason to believe it was brought about by Paxton's promise to Leppard to get another lot for him as good as the one he had lost, or to fetch it out all right for him, and that the change of side from McRae to Paxton—from the person he was pledged to support to the person he was pledged to oppose—was effected by the promise then made by Paxton. I am not prepared, however, to find this charge proved against the respondent; it rests more on suspicion than on clear positive proof, and the petitioner might have given more testimony on the subject by the examination of Mrs. Leppard; and as that has not been done, I do not feel disposed to convict the respondent and to subject him to such highly penal consequences, so long as I do not feel assured the offence has been proved. Although I may believe the transaction is surrounded with the greatest suspicions, I am glad to be able to say that the charge has not been proved against the respondent.

The last of the nine charges, which is the second of the personal charges, is that the respondent was guilty of bribing Thomas Hope. Hope's evidence was as follows:

"I live on Scugog Island. I was a tenant of Paxton's for twelve or fourteen years; live on the same lot yet. Paxton is not now my landlord. I had an unsettled account with Paxton before the last election. It was for wheat I had sold to Marsh and Trounce while they ran Paxton's mill. They are bringing up a claim for rent since the election. I tried lots of times before the election to get a settlement for the wheat. I claim there is money due to me. I applied to Paxton and to Marsh and Trounce. Paxton always said he would settle. Trounce said they had paid it to Paxton. Marsh said he would see and get it settled.

"I told Marsh I would not vote for Paxton unless that account was settled, and he said he would try and get it settled. I never talked to Paxton of it about the time of the election. Marsh said he would go down and see Paxton, and he did, and he brought me a note signed by Paxton for \$110. I gave the note to Mr. Billings of Port Perry to collect, for it was not paid when it was due. Marsh, on the Saturday before the polling day, showed me the note he had got for me, and I told him to give it to Mr. Billings at Port Perry. Then he said that Tom (Paxton) had been a good friend to me, and it was too bad he and I should quarrel. I told Marsh we would do the best we could for Paxton at the election. It was about five years ago I sold the wheat to Marsh and Trounce, and I had been trying ever since then to get a settlement. I had two sons who had votes, and that is what I meant by *we* would do all we could for him. I had not the team out. We all voted. It is now said there are \$200 arrears of rent against me; but there are no such arrears. The note is not paid. I should not have voted for Paxton if I had not got the note, nor would I have voted for McRae either."

Cross-examination: "I did not tell Marsh that if I did not get the thing settled by the Monday morning, I would sue him on the Monday morning. I said if I did not get it settled I would not vote for Paxton. I spoke to Marsh about not voting for Paxton about a week before the polling day. That conversation was in Tom Walker's tavern at Port Perry. I don't know that I ever said I would sue Marsh for the claim. I did not know where to collect my claim. I threatened of course to sue the claim at different times. I threatened Trounce to sue it: To the best of my knowledge I never threatened to sue Marsh. I did not threaten Marsh at Walker's hotel to sue him that night if I did not get the money or a note, nor to sue him on Monday after if I did not get it settled, or a note for it by Monday. There were quite a few in the tavern at the time Marsh and I were conversing. Mr. Shaw was there, so was Reuben King, I think also James Grove. Marsh did not say, that I recollect, when I said I would not vote for Paxton, that I must not speak of the election in connection with that matter, nor did he say, that I recollect, that the election would have nothing to do with that claim. Marsh said I need not be afraid but I would get my pay. I don't know that Marsh said anything to me about the election. I did to him."

He was shortly after recalled. He said, "I look at the note; can't read it; believe it to be the one."

Cross-examination: "I know John Phillips; did not say to him if I got \$20 I would say nothing of the matter. I did not know I had to come here till last night. I did not threaten to come down. I had a conversation with Phillips about giving evidence of the transaction. That was two or three weeks ago. I did not say to him if I got \$20 I would not come down and give evidence. I never talked to Bigelow of this transaction; did so on Saturday last; he said if I came down it would be worse for me. I did not say it would be worse for Paxton if he did not settle with me, for I would come down and break the election, or anything to that effect. I did not say to

Bigelow that if Paxton did not settle it to my satisfaction I would come down and give evidence. It was a few minutes after that Mr. Bigelow sent a man to me with the off-set of the rent. The conversation with Phillips of the \$20 was about a wholly different matter."

For the respondent, Charles Marsh was examined. He said at the conversation at Walker's tavern, spoken of by Hope, the latter said to him "if I did not pay the claim or give my note he would sue me for it by nine on Monday morning. I refused to give it; I said he knew it was not my place to pay it; if he consented to wait, and did not put costs on for three or four days, till I could see Paxton, who should pay it, I would endeavor to get it settled for him. He said he would not wait; his friends advised him not to wait; he would have it or he would put me to costs. He intimated that Paxton had better settle that claim, for he might want his help at the election. I said to Hope if the election had anything to do with it, I would have nothing to do with the settling of it. . . . I said if they would wait till Paxton came home, and I could see him, as he was the party to settle it, I would try and settle it, and if Paxton did not settle, he, Hope, could sue as soon as he liked. That was the way it was left that night. I said most distinctly it had nothing to do with the election. In the forepart of the following week I saw Paxton and told him what Hope had said about putting me to costs in that matter, and I said I wished he would settle it to save me from being sued. I did not tell Paxton of Hope's remark as to voting. Paxton said he calculated to settle it, and he would if he knew the amount. I said it was somewhere about \$110. Paxton then wrote out the note and gave it to me for Hope. . . . I did not give Paxton to understand directly or indirectly the note had anything to do with the election."

Cross-examination: "Hope did not say to me he would not vote for Paxton unless he settled that claim; he did not say more than that Paxton might want his help about the election. I did not take the election into consider-

ation at all when the note was given. I went on purpose to see Paxton after the conversation in Walker's; went to his house. . . . I am sure nothing then took place between me and Paxton of the election in connection with the note. I supported Paxton at election. I was not on the committee at Port Perry. I went in there one night. I did some canvassing. I attended two public meetings in Reach. I think I was on a Reach committee. I canvassed in my own school section. I had a voter's list; one of the committee came for it and took it, and I never saw it after. He said he thought I was not doing much, and he would give the book to some one else. Paxton and I married sisters. He never asked me to do anything for him. I have asked him what success he had.

Mr. Shaw was examined. He mentioned a conversation between Hope and himself about Hope's claim on the same day when Hope and Marsh, in Shaw's presence, had the conversation. He supports Mr. Marsh's view generally, of what was said between Hope and Marsh. So far as it is modified, it is in the following passages of his cross-examination :

"I take an interest in all the Reform elections. I did not want to see Marsh put to costs; my whole anxiety was not to save Marsh the costs; it was partly to save Hope's vote. My interest was equally to save the costs and to save the vote. . . . I think Hope said he would not vote for Paxton if he did not get the claim settled. King said now was the time to have it settled, before the election; he said so to Marsh. King mentioned more strongly than Hope that he should get his pay before the election. . . . Marsh told me before the polling day he had got the note from Mr. Paxton, for Hope. There was a committee at Port Perry for the election. I was there every night; took any part that was handy; I did all I could; Paxton knew my nature; I would do all I could: he had known how I worked; everybody in town knew it." He also said in one part of his examination in chief, Marsh said "if Hope would wait till after the

election, and Paxton were home, he would have it settled. King said now was the time to settle it, and not to wait."

John D. Phillips, the miller of respondent at Port Perry, contradicted Hope very explicitly as to the conversation about the \$20.

Joseph Bigelow, a partner of the respondent, was also examined. He was said to have been the chairman of the committee in the respondent's interest at Port Perry. He bought the land about two years ago from Paxton, which Paxton had rented to Hope. The rent was \$500 a year. Bigelow did not let Hope know when he bought the place, and when he did, and applied for the rent, Hope said he had paid \$200 of it to Paxton. Bigelow said that would be all right, and he took Hope's note for the remainder, \$300, of that year's rent. The Saturday before this trial he made a claim on Hope for the \$200 of rent referred to, and of a note for \$116 he held against Hope, and he said he had concluded to put them in suit. He continued: "I said I was satisfied he owed the rent, and I was determined to collect it. He said, I would if I could; he said it would be worse for Paxton if it was not settled as he wanted; that he would do all he could in the election suit. I said I did not care, that it was a matter of business with me."

On this evidence, from what I have already said about committees, I find the Reach committee was a body for whose acts the respondent is liable, and that Marsh, who is also a brother-in-law, was a member of it, having had a voters' list, and being entrusted by that body with the canvassing of or in his school district, and that he did canvass.

I find also that Mr. Shaw must be considered to have been, from his constant attendance at the Port Perry committee meetings, and of which he was very probably a member, to have been a member or in the same position as a member of that committee, and that the committee was one at which the respondent's recognized agent, Mr. Card, was present upon one occasion, and had

therefore knowledge of. It was presided over by Mr. Bigelow, the partner in business of the respondent. It was held in the same place where the respondent resided, and I have no doubt he had personal knowledge also of the existence of that body. I find also that Mr. Shaw aided actively in promoting the election, and to the personal knowledge of the respondent, and that he and Marsh were agents, or sub-agents at least, of the respondent, for whom and for whose acts he was and is responsible.

I am of opinion Hope's main story is quite true and correct; that is, "that he did tell Marsh he would not vote for Paxton if he did not get the claim settled." He swears to it positively, and Mr. Shaw expressly confirms him. Marsh denies that such language was used, but he admits that while Hope was pressing for an immediate settlement, Hope did say that Paxton might want his help at the election. I think he said more than that, and that Marsh heard it, for it was said to himself.

Mr. Shaw also says that Marsh wanted Hope's claim to lie over till after the election, but that both Hope and King said that "now was the time to have it settled, before the election."

The meaning of that all parties fully understood, which was that the coming on of the election was the pressure put on by Hope to have his claim settled, and that the other parties, to get the benefit of Hope's vote, were to remove his objection to voting for Paxton before the polling day.

Shaw says plainly "my interest was equally to save the costs and to save the vote," and he was also an agent of the respondent's, and taking a special part in the arrangement of that matter. I find that the facts show the settlement of that demand at that juncture, and in so great a hurry, with such special zeal for Hope's interest, after it had lain over for more than five years, neglected or resisted by all parties, Paxton, Marsh and Trounce, who had been repeatedly applied to by Hope for payment, was

brought about by Marsh and Shaw with the design and for the express purpose of securing the votes of Hope and his sons for the respondent, and which Marsh and Shaw knew could not be obtained upon any other terms. Shaw substantially admits that that was his purpose and interest. Marsh denies it; but I cannot take his mere statement as an answer against the evidence of Hope and Shaw, and against the facts of the case, and his own conduct. When his conduct is not consistent with his statement in some particulars, and cannot reasonably be made so by any explanation, I prefer to be governed by what he did, and by the time and incidents of his doing the act, to discover why it was he did do it.

And viewing the case in that way, and calling in aid the evidence of Hope and Shaw and the surrounding facts and circumstances, I have no doubt that the object and purpose of Marsh in getting that note from the respondent at the time it was got, was for the purpose of procuring and securing the votes of Hope and his sons for the respondent at the election; and I have no doubt he knew that Hope believed the note was being got for the same purpose, and that if it were so got before the polling day, that Hope and his sons would and were to vote for the respondent, but not otherwise.

I should say here that Hope has been contradicted by Phillips as to what was said in connection with the \$20; which of them is telling the truth may be a question. Hope says he was referring to a different matter than the settlement of his demand and the claim against him for the rent, at the time he spoke to Phillips. It may be Phillips is in that respect more correct in his account of the conversation than Hope.

Hope also is contradicted by Marsh and by Shaw as to the threats they say he made at Walker's tavern to Marsh, to sue him if the claims were not settled by some given time, and which threats he denies. He is also contradicted by Mr. Bigelow, who says that Hope said if his claims were not settled it would be worse for Paxton, and

that he would do all he could in the election suit against Paxton; which statement Hope denies. He says it was Bigelow who said to him if he came down to give evidence it would be the worse for him.

I do not think the contradiction by Phillips of Hope, nor the contradiction by Marsh and Shaw of Hope, in the particular referred to, destroy Hope's credibility and veracity as a witness. There are other causes to which these contradictions can be assigned than to untruthfulness of character. Marsh is directly contradicted by Hope and Shaw in an important matter, and the surrounding facts confirm them, yet I do not for a moment impute wilful misstatements to Mr. Marsh.

Undoubtedly in cases of contradiction I must be more cautious in accepting as true the statements of a witness who has been so contradicted, but until I have lost all faith in him, I must not disbelieve him altogether.

I have so dealt with Hope, and in forming the conclusions I have come to in his case, I have sought and found confirmatory evidence in the testimony of Mr. Shaw, partly in that of Mr. Marsh himself, and very strongly in the accompanying facts and circumstances. There is still one matter of contradiction to be accounted for, that between Mr. Bigelow and Mr. Hope. Mr. Bigelow says that Hope said if his claim was not settled it would be worse for Mr. Paxton—that he, Hope, would do all he could against him at the election trial; while Hope says that it was Mr. Bigelow who said that if he, Hope, came down to the trial it would be worse for him.

The facts are that on the Saturday before the trial Hope and Bigelow had a conversation, and Bigelow made a demand on Hope for payment of a note for \$116, which is no doubt a just claim, and also for an arrear of \$200 upon a former year's rent, which latter sum Hope disputed, because he said he had before that, and before he had had any notice of Mr. Bigelow being his landlord, settled with Paxton, his former landlord. Mr. Bigelow had long before that time been told that very fact by Hope, and he had

accepted it when first told of it as true, and had allowed it to Hope as good payment by deducting it from that year's rent, and taking Hope's note for \$300, the balance of that year's rent.

Hope never heard of this alleged arrear of rent being claimed until he began to press Paxton for payment of the note for \$110, which Marsh got for him just before the election, and probably he thought the claim for rent was set up to overreach his claim upon the note.

It was upon that Saturday before the trial that Mr. Bigelow, the business partner of the respondent, declared to Hope he had concluded to put the rent (as well as the note for \$116, which is not in dispute) in suit, and at that time Mr. Bigelow knew that Hope was required to attend this trial as a witness.

I think it is somewhat suspicious that Mr. Bigelow, the business partner of the respondent, at such a time should tell (I do not say threaten) Hope, a witness upon the trial against his partner, that he would sue him for a large claim of rent, which he, Bigelow, had himself settled for in full with Hope many months before that time, and I confess, if I am obliged to say whether it was Hope who threatened Bigelow it would be the worse for Paxton if his, Hope's, claim were not settled, or Bigelow who threatened Hope it would be worse for Hope if he, Hope, came down to give evidence against Paxton, that I shall hold there is quite as much, and perhaps more, reason for believing that Mr. Bigelow, who was advancing such a claim at such a time, and with a knowledge of Hope's position as a witness at that time, was the person who made the threat as or than that Hope was the one who made it.

I can see that Hope might have made it because of the claim, which he believed to be an unjust one, then made upon him, and as a mode of getting rid of it. There are views in favor of each of these two parties; but most assuredly it is not for what Mr. Bigelow has said that I should discredit or disbelieve Mr. Hope.

The result of my examination of the case is that upon all the charges above stated, excepting the second and third, the evidence has not been sufficient to maintain them.

I find also that the two charges with respect to the alleged bribery of Edward Cunningham and Joseph May, which I disposed of on the trial, also failed.

I may say I have no hesitation in finding the second charge fully proved against the respondent so far as the act of bribery was committed by Charles Marsh, his agent, but I acquit the respondent of all personal participation in it or knowledge of it. Whatever knowledge the respondent may have had of the nature of Marsh's act can rest on suspicion only, which can never, and especially in so serious a matter as this is, form the ground of an adverse judgment.

And I desire to say also, that while I determine the third charge against the respondent, I do so with less confidence than I dispose of the second charge, because there are not wanting *dicta* of Judges which are not unfavorable, to a considerable extent, to the view of the respondent, that Bruce was a mere volunteer for whom he, the respondent, is in no way liable; but that question in this case is of less consequence from the conclusion I have arrived on the second charge, that the election must be vacated; and I hereby determine that Thomas Paxton, the respondent, the member whose election and return are complained of, was not duly elected or returned for the reasons given upon and with respect to the second and third charges above set forth, and that the said election was and is void.

I shall give the petitioner the general costs of the cause. I shall direct the petitioner to pay the respondent his costs of the 4th, 6th, 7th, 8th, and 9th charges, and also of the charges made with respect to Edward Cunningham and Joseph May.

I shall allow no costs to either party of the 1st and 5th charges, and I shall direct the respondent to pay to the petitioner his costs of the 2nd and 3rd charges; and I

shall report to the Clerk of the Legislative Assembly (there being at present no Speaker thereof) that Donald Bruce, of the Village of Beaverton, was guilty of a corrupt practice, during the election, by the intimidation of George Wharen, an elector of the said Riding, as before mentioned, with respect to the third charge; and that Charles Marsh, of the township of Reach, was guilty of a corrupt practice during the said election, by the procuring for and delivery to Thomas Hope, an elector of the said Riding, the promissory note as before mentioned, with respect to the said second charge.

That no corrupt practice was committed at the said election by or with the knowledge and consent of either of the candidates thereat.

And that corrupt practices have not extensively prevailed at the said election, nor at all, so far as I have reason to believe, except as aforesaid.

I shall report also that many of the taverns in the Riding were open, and in many of the taverns of the Riding spirituous and fermented liquors were given and sold upon the polling day, and during the polling hours of that day, in violation of the 66th section of the Election Law of 1868.

From the above judgment both parties appealed to the Court of Appeal; the respondent against the decision of the learned Judge in (1) the Bruce-Wharen and (2) Marsh-Hope cases; and the petitioner against the decision in (1) the Leppard bribery, (2) the Hope bribery, and (3) Foley treating cases.

The appeal and cross appeal were argued before Draper C. J. A., Strong, Burton, and Patterson, JJ. A.

Mr. Hector Cameron, Q.C., for petitioner.

Mr. Hodgins, Q.C., for respondent.

The judgment of the Court was delivered by

BURTON, J.—This case comes up by way of appeal and cross appeal from the judgment of Mr. Justice Wilson.

On the appeal two questions are raised :

1st. Whether the respondent, through Donald Bruce, his agent, exercised undue influence on one George Wharen, a voter ; and

2nd. Whether he was guilty of bribing one Thomas Hope through Charles Marsh, an agent.

The respondent contends that in neither case was agency established, and that, assuming the agency to be established, the act complained of in the first of the two charges was not within the 72nd section of the Election Law of 1868, and the act complained of under the second head was not bribery.

The learned Judge with some hesitation held the agency of Donald Bruce to be established ; but I have not deemed it necessary to consider that question, inasmuch as I have been unable to convince myself that what is stated to have occurred is a corrupt practice within the 72nd section.

The evidence tends to show that Wharen was in arrears to the Crown for a lot of land, and it is contended that Bruce endeavored either to intimidate him or to influence his vote by persuading him that the Government would look sharply after those so circumstanced who did not vote for supporters of the Government.

No doubt it is the intention of the law that voters should exercise their franchise with the utmost freedom, that they should use their own judgments, and that no influence should be brought to bear upon them which would have the effect of interfering with this free exercise of judgment ; and if, in a constituency composed largely of debtors to the Crown for Crown lands, an organized and general system had existed, leading the electors to believe that supporters and opponents of the Government would be differently dealt with, so as to create any ground of apprehension in their minds, I entertain no doubt that the common law would declare such an election to be a void election without any proof of agency, because it would be

carried on contrary to what the principle of the law is. But it is not shown in this case that any such general practice prevailed; and the question here is whether, assuming the agency to be established, the act was one of undue influence, in its proper statutory sense, of using any violence, or of threatening any damage, or of resorting to any fraudulent contrivance, to restrain the liberty of a voter, and so either to compel or frighten him into voting or abstaining from voting otherwise than in accordance with his own free will and judgment.

The Act applies not only to cases when the injury inflicted or threatened is wrongful or violent, but to cases where, although the party has a perfect legal right to do the act (if not done with a view to affecting the vote), the doing it does inflict harm upon the other side; still I apprehend it must be a threat of something which the party or the person he represents would presumably have the power to carry out. If, for instance, the Commissioner of Crown Lands had been the candidate, and his agents had made a representation of the kind ascribed to Bruce, or if such threat had been made by a local agent of the department, the voter might perhaps not unreasonably assume that such a threat might be acted on.

What occurred in this case was at most a mere *brutum fulmen*, if intended as a threat at all; it was one which neither the principal nor the agent had any means of enforcing. It appears that as a matter of fact Wharen was not intimidated, although that might not be material if what is alleged to have occurred amounted to a threat within the statute; but the words, as it seems to me, were at most but an expression of opinion upon a subject on which every one was competent to form his own judgment. Speaking for myself only, I am of opinion that it was not an act of intimidation or undue influence within the 72nd section. But it is unnecessary to decide the question, as we are all agreed that the other charge is fully sustained.

It was contended that as there was an actual legal debt, Marsh was merely carrying out what he was bound by law to do, and that his motive could not be inquired into.

I am not aware that there has been any express decision upon the point, but I should say that it is always open to inquire, under statutes of this nature, whether the debt was simply paid in accordance with the legal obligation to pay it, or whether it was in fact paid or secured in order to induce the elector to vote or refrain from voting.

In *Cooper v. Slade* (6 H. L. C. 746), on the argument in the House of Lords, Lord Brougham put this case: "Suppose a debtor to say to his creditor, 'If you will vote for A, I will pay you what I owe you,' would that be within the statute?" Lord Wensleydale adding: "It being a great advantage to have the debt paid without the trouble to bring an action to recover it."

If it be open to inquire into the motive, as I think it is, it is impossible to say that the learned Judge was not fully justified in holding that the motive which influenced Marsh was that of procuring Hope to vote at the election. Then, was there a gift of any money or valuable consideration in order to induce him so to vote?

The voter had for upwards of five years been endeavoring to procure payment of this debt without success. The learned Judge has come to the conclusion that he did receive valuable consideration, in the shape of Mr. Paxton's promissory note, in place of a claim which his original debtors insisted should be paid by Mr. Paxton, but which he disclaimed all liability for, and which had remained in that unsettled position for nearly six years. We cannot say that the learned Judge was wrong in coming to the conclusion that this note would not have been given unless with the view of inducing Hope to vote; and as we think the evidence of agency was ample to warrant the conclusion of the learned Judge, his decision should be affirmed and this appeal dismissed.

On the cross appeal it is urged that the decision of the learned Judge was erroneous in holding that the respondent was not proved to have been guilty of bribery in the Leppard case, in holding that the bribery of Thomas

Hope by the respondent himself was not proved, and that the treating by the respondent's agent, James P. Foley, at a meeting of electors assembled for the purpose of promoting the election of the respondent, had not been proved.

As to the first of these charges, the learned Judge reports the evidence of Leppard as unsatisfactory and unreliable, repugnant in itself and directly contradicted in some respects, and he declined to convict the respondent and subject him to such highly penal consequences as would follow an adverse decision upon such evidence. We see no ground whatever for differing from that view.

Upon the second point, the only evidence to show Paxton's connection with the transaction is that of Marsh, who, after referring to the conversation with Hope, says: "In the forepart of the following week I saw Mr. Paxton, and told him what Hope had said about putting me to costs, and I said I wished he would settle it, to save me being sued. I did not tell him of Hope's remark as to voting; Paxton said he calculated to settle it, and would if he knew the amount. I said it was about \$110, and he then gave the note."

I am very far from saying that the case is not one of grave suspicion; but there is no reason, that I am aware of, why the general maxim should not apply, that in penal statutes questions of doubt are to be construed favorably to the accused; and although it may be said that the party charged here had an opportunity of purging himself by his own oath, if he chose to take the ground that the charge was not proved, and that he was not called upon to disprove it, it was competent for him to do so, subjecting himself to the risk of having his omission to do so commented upon by the opposing counsel. No doubt, the most was made of that omission, and the learned Judge, sitting also as a jury, has come to the conclusion that the evidence was not sufficient to satisfy him that the charge was brought home to the respondent, and he has acquitted him of all knowledge of or participation in it. It would be

too much in a quasi criminal case to ask us, under these circumstances, to reverse his finding.

It is not necessary to offer any opinion upon the Foley case, as the charge if established merely goes to avoid the election, but we may say that the evidence does not satisfy us that he was an agent *at the time* of the alleged treating.

(9 *Journal Legis. Assem.*, 1875-6, p. 14.)

NORTH WENTWORTH.

BEFORE CHIEF JUSTICE DRAPER.

HAMILTON, 19th and 20th May, 1875.

BEFORE THE COURT OF APPEAL.

TORONTO, 16th and 25th September, 1875.

ROBERT CHRISTIE, *Petitioner*, v. THOMAS STOCK, *Respondent*.

Committees—Agency—Treating on polling day—Corrupt practice with Respondent's knowledge and consent—32 Vic., cap. 21, sec. 66 ; 36 Vic., cap. 2, secs. 1 and 3.

About a dozen of the electors met some time before the election and nominated the respondent as the candidate who should contest the election in the interest of the political party to which they belonged. The respondent accepted and acted upon the nomination. They met occasionally for the purpose of promoting the respondent's election, procured voters' lists, canvassed voters, and got reports on which they estimated their chances of success.

Held, that if they did not style themselves a committee, they had assumed the functions which usually devolve upon such bodies.

On the polling day, and during the hours of polling, the respondent drove up to a tavern at C., where he met one S., a member of the above-mentioned committee, and addressing him or the assembled people, said, "Boys, this is the first time I came to C. when I dare not treat, and some one will have to treat me." S. replied that he would treat, and, with the respondent and 30 or 50 people, went into the tavern, where S. treated some of the people, and the respondent drank with the rest.

Held, 1. That going into the tavern for the purposes of the treat, when the law directed that such tavern should be kept closed, and joining in and accepting such treat, was a literal as well as a substantial violation of the law, and a corrupt practice.

2. That the concurrence of the respondent in the commission of such corrupt practice made him liable to the disqualification imposed by the statute for "a corrupt practice committed with the actual knowledge and consent of a candidate."

The decision of Gwynne, J., in the *Lincoln case* (*post*), that tavern-keepers alone are liable for the violation of s. 66 of 32 Vic., c. 21, as amended by 36 Vic., c. 2, s. 1, not approved of.

Per Burton and Patterson, JJ. A.—The 2nd sub-sec. of s. 3 of 36 Vic., c. 2, applies equally to the elected and defeated candidates at an election ; and, if found assenting parties to any practice declared by the statute to be corrupt, each of them is liable to the disqualifications mentioned in the statute. ✓

The petition contained the usual charges of corrupt practices.

The facts of the case on which the election was avoided are set out in the judgment, and were substantially as follows: On the polling day, and between 2 and 3 o'clock in the afternoon, the respondent drove up to Davidson's tavern in the village of Carlisle, where he met one James Sullivan, who had been an active member of the organization which had nominated the respondent as their candidate. The respondent, addressing Sullivan or the assembled people, said, "Boys, this is the first time I came to Carlisle when I dare not treat, and some one will have to treat me." Sullivan said he would treat, and with the respondent and a number of people went into the tavern, and while there Sullivan treated some of the people; the respondent drank with the rest.

Mr. Bethune, for petitioner, contended that Sullivan was an agent of the respondent, and that his treating on polling day was a corrupt practice; and the respondent, being present and partaking of the liquor, was a consenting party to the infringement of the law. Under the present law, if a candidate is a consenting party to a breach of the law, agency need not be proved.

Mr. Thos. Robertson, Q.C., for respondent, contended that the respondent did nothing but partake of refreshment, and that act is not brought within the definition of a corrupt practice. There was no proof of Sullivan's being an agent of the respondent; in fact, he was not an agent, nor was he a member of the Conservative Association, by whom the respondent was brought out; nor was there any charge in the particulars of Sullivan's being guilty of a breach of sec. 66 of the Election Law of 1868.

DRAPER, C. J. A.—In the interval between the adjournment of the Court yesterday evening and the meeting

this morning, I carefully read and considered the whole evidence. The result at which I arrived in regard to the acts of the respondent and others on the polling day, and during the hours appointed for taking the polls at Davidson's hotel in the village of Carlisle, rendered it unnecessary, in my opinion, to determine any other of the charges advanced for the purpose of avoiding the election. My finding and my report to the Speaker will be limited to that one matter.

It will be convenient to begin by referring to the statutory provisions on which the charge of corrupt practices is founded. They are contained in the Ontario Statutes, 32 Vic., cap. 21, sec. 66; 36 Vic., cap. 2, secs. 1 and 3, sub-secs. 1 and 2.

1st. "Every hotel, tavern, and shop in which spirituous or fermented liquors or drinks are ordinarily sold, shall be closed during the day appointed for polling in the wards or municipalities in which the polls are held; and no spirituous or fermented liquors or drinks shall be sold or given to any person within the limits of such municipality during the said period, under a penalty of \$100 in every such case."

2nd. "'Corrupt practices' or 'corrupt practice' shall mean bribery, treating and undue influence, or any of such offences as are defined by this or any Act of the Legislature, or recognized by the common law of the Parliament of England; also any violation of the 46th, 61st and 71st secs. of the Election Law of 1868, and any violation of the 66th section of such last mentioned Act during the hours appointed for polling."

3rd. "When it is found, upon the report of a Judge upon an election petition, that any corrupt practice has been committed by any candidate at an election, or by his agent, whether with or without the actual knowledge and consent of such candidate, the election of such candidate, if he has been elected, shall be void;" and further, when it has in like manner been found "that any corrupt practice has been committed by or with the actual knowledge or

consent of any candidate at an election, in addition to his election, if he has been elected, being void, he shall, during the eight years next after the date of his being so found guilty, be incapable of being elected," &c.

It will be seen, therefore, that the first provision above stated prohibits certain things, and subjects the persons who act contrary to the prohibition to a penalty of \$100 in every such case. The second, among other things, makes things prohibited corrupt practices ; and the third, in its first branch, avoids the election of a candidate found guilty of such corrupt practice, and, by the second branch, superadds a very severe personal disqualification.

The question I have to determine is, whether the respondent is guilty to the full extent, so as to be unseated and disqualified, or so far only as to be unseated, and this question is to be disposed of on the evidence taken on the trial.

Now, it is not disputed that the 66th section above quoted was entirely set at naught in both particulars. Davidson's hotel was not kept closed during the day appointed for polling, and whiskey and beer were both sold and given in that hotel within the limits of Carlisle. Davidson's evidence proves the house not altogether open, for there was no access proved to exist directly from the street into the bar-room ; but entrance from the street into the dining-room was proved, and spirituous liquors and beer were passed from the bar into the dining-room. Then it was proved by Sullivan that, being outside the hotel, he saw respondent drive up ; that respondent, addressing Sullivan or the people assembled, said something to this effect : " Boys, this is the first time I came to Carlisle when I dare not treat, and some one will have to treat me ;" and Sullivan said he would treat, and, with respondent, went into the house, followed by a number of persons, variously estimated at from 30 to 50. Several of them drank, the respondent taking a glass of beer.

Surely no one can doubt that these facts constituted a breach of sec. 66, and under the subsequent Act of the

Legislature such breach was a corrupt practice. The respondent's attention had evidently been attracted previously to the law, which occasioned him to say he *dared not treat*, and this makes it the more remarkable that he should have so entirely overlooked or forgotten the prohibitory enactment as to having certain houses closed, and as to the sale and gift of liquors, etc. In reality, he acted like one who did not know that the law required that the house should be kept closed, and that liquors should not be sold by the tavern-keeper or given away by Sullivan or any other purchaser while the polling was in progress. I am compelled to attribute knowledge of the law to him; nor can I avoid the conclusion that he was a participant in its breach. He went into that house in order to accept a treat which his own remark shows he did not imagine would be limited to himself, and which was not so limited.

The whole evidence may be thus summarized. About a dozen of the electors of North Wentworth met together some time before the election for North Wentworth, to consult as to their course, they all being of similar political views. By them and others the respondent was nominated, and ultimately accepted the nomination. James Sullivan was one of their body. There was but slight evidence given of their proceedings until the polling day. It appeared that they were not personally summoned to meet—did not keep minutes of their proceedings, appointed no chairman—but as they met one another, they agreed to meet and adjourn their meetings from time to time; and it was argued, on these and similar grounds, that they did not constitute a committee—but there is no magic in that word. These parties united together for the common purpose of procuring respondent's election; they had some organization; they canvassed electors, procured voters' lists, and got reports on which they estimated their chances of success. They are the parties, so far as appears, whose nomination the respondent accepted and acted upon; and if they did not style

themselves a committee or committees, they seemed to have assumed the functions which usually devolve upon such bodies. Mr. Sullivan appears to have been an energetic member, under whatever name, in supporting the respondent. It is he who, in the respondent's presence, gives spirituous liquors and beer to some of the electors who were assembled on the polling day as respondent's friends, the respondent being present, with his silent consent and undeniable knowledge.

This was a corrupt practice by the express language of one of the statutes. It was committed, as I conclude, to help the respondent's election by one of his known supporters, and it was concurred in by the respondent, and, as I am willing to think, in forgetfulness at the moment of the law.

I do not found my conclusion on the question whether the respondent actually did drink any of the liquor or beer given by Sullivan, who bought from Davidson. But he was one of those who more or less actively concurred in a corrupt practice. He joined in going into the house which the law directed should be kept closed; he joined in accepting beer as a treat, or, in other words, as a gift—in a literal as well as substantial violation of the law, with a knowledge of the fact and assenting thereto. It is not as if the question turned on a violation of sec. 66, when he was prosecuted for the pecuniary penalty, and might say he was not within the law, having neither sold nor given. Until those acts were declared a corrupt practice the election was not avoided, but since that declaration, the effect of the 66th section is extended. The concurrence in the commission of the prohibited acts makes the candidate responsible for the newly imposed consequence.

I must report to the Speaker accordingly.

From this judgment the respondent appealed to the Court of Appeal.

Mr. J. Hillyard Cameron, Q. C., Mr. R. A. Harrison, Q. C., and Mr. Thos. Robertson, Q. C., for appellant.

Mr. Bethune for petitioner.

HAGARTY, C. J.—The facts, as detailed by testimony friendly to the appellant, are very clear. Davidson's tavern was open for the sale of liquor during polling hours, although the form of closing the bar was observed. This was in direct violation of the statute. Several persons are assembled there. The appellant drives up, declares that he cannot and will not treat, and that some one must treat him. His supporter, Sullivan, accordingly does so; appellant takes a glass of beer, and two or three others join in Sullivan's treat.

It is forcibly argued for the appellant that these facts do not show a corrupt practice committed "by or with the actual knowledge and consent of the candidate." First, it is urged that the violation of 32 Vic., cap. 21, sec. 66, can only mean an incurring of the penalty of \$100 thereunder, and that the appellant cannot come within its provisions—(1) in the strictest construction of it, that it only applies to the innkeeper; and (2) on the wider construction, that he was not either the seller or the giver of the liquor. Again, that sec. 3 of the Ontario Act of 1873 is divided into two sub-sections which must be read together, and that the corrupt practice brought home to the candidate's knowledge and consent, in sub-sec. 2, must be read as only the corrupt practice mentioned in the preceding sub-sec. 1, "committed by any candidate at an election, or by his agent;" that the facts before us may show a corrupt practice in the innkeeper, but that the latter was not the appellant's agent, or that even if a corrupt practice in Sullivan in giving the liquor, the latter was not appellant's agent.

It is pointed out that section 46 of the Act of 1871 for which the existing enactment has been substituted, provides that when any corrupt practice has been committed by or with the knowledge and consent of any

candidate, his election, if elected, shall be void, and he shall be disqualified, &c. And an argument is founded on the effect of the two sub-sections substituted for this 46th section.

The legal construction of the existing clauses urged by the appellant seems to have commended itself to the well-considered judgment of my brother Gwynne in a very recent case (*Lincoln case, post*; s. c., 12 Can. L. J. 161).

I feel very great difficulty in bringing my mind to the same conclusion.

We have not much authority to guide us. It seems to me that we must simply try to satisfy ourselves as to the meaning of the words used by the Legislature. We have to ask ourselves what was considered the wrong to be remedied; next, the remedy to be applied. The wrong was very plain—the keeping open of public houses, and selling and giving away of liquor on polling days.

For the decision of this case we are not necessarily to decide some of the extreme cases suggested in argument, such as the drinking of a glass of beer at the private table of any person (not an innkeeper) at which an ordinary guest might be present and partake of such drink as the common beverage used by the family—the meal and the presence of the guest being wholly unconnected with any election or canvassing object. I am quite prepared to express an opinion on this point whenever it may be necessary to do so.

To confine the section wholly to the innkeeper would prevent its reaching the case of a private person who might on the polling day broach casks of ale or spirits for the public use of all comers. It might perhaps not be easy to bring such conduct within the grasp of the law as bribery, or to connect the person with a candidate as an agent, or perhaps even as an avowed supporter of any candidate, and yet the mischief caused by such conduct might be enormous.

It is to be remarked that this clause appears in a statute that makes no provision against treating, except

in the one case as to meetings called to promote the election.

We must always, in my judgment, try to construe a statute in the light of common sense, and always give full credit to the Legislature to have used words (not being words of art or of technical significance) in their ordinary meaning, as they would be naturally understood by those whose conduct they are intended to regulate.

There is a celebrated passage as to the construction of statutes in Plowden, 204: "The judges of the law in all times past have so far pursued the intent of the makers of statutes that they have expounded Acts which were general in words to be but particular where the intent was particular. . . . The sages of the law heretofore have construed statutes quite contrary to the letter in some appearance, and those statutes which comprehend all things in the letter, they have expounded to extend but to some things; and those which generally prohibit all people from doing such an act, they have interpreted to permit some people to do it; and those which include every person in the letter they have adjudged to reach to some persons only; which expositions have always been founded upon the intent of the Legislature, which they have collected sometimes by considering the cause and necessity of making the Act, sometimes by comparing one part of the Act with another, and sometimes by foreign circumstances. So that they have ever been guided by the intent of the Legislature, which they have always taken according to the necessity of the matter, and according to that which is consonant to reason and good discretion."

Sir George Turner, L. J., cites this passage in *Hawkins v. Gathercole* (6 De Gex, M. & G. 21), saying, "I have selected these passages as containing the best summary with which I am acquainted of the law upon this subject. . . . We have to consider not merely the words of the Act, but the intent of the Legislature to be collected from the cause and necessity of the Act being

made, from a comparison of its several parts, and from foreign, that is, extraneous, circumstances, so far as they can justly be considered to throw light upon the subject."

Sir J. L. Knight Bruce, L. J. (p. 19), speaks of the propriety of reading the Act "with a due degree of attention to the nature of the subject certainly embraced by it, to the state of our institutions and jurisprudence when the Act was passed, to the judicial construction that other statutes have by approved decisions received, and to the universally recognized canons by which the interpretation of laws is regulated."

The case is approvingly noticed in *Cope v. Doherty* (2 De G. & Jo. 614), before the Lord Justices in 1858.

In the recent *South Essex case* (*ante* p. 235; s. c., 11 Can. L. J. 247), the learned Chancellor held that the partaking by Alfred Wigle, whom he found to be an agent of the respondent, of a treat given by J. McQueen during polling hours in Lovelace's tavern, was a corrupt act within the statute, which would avoid the election.

Here the candidate himself partakes of a treat under the same circumstances, instead of his agent. If the *South Essex case* were rightly decided (on which I express no opinion), it would seem to be impossible to uphold either this election or the non-disqualification of the candidate. If it is a corrupt act sufficient to avoid the election by the agent accepting the treat, it must be equally so in the principal, with the fatal addition of knowledge and consent. I think the present case raises a much more formidable question than that before the learned Chancellor.

It is pressed upon us that the evidence shows a direct participation by the candidate in what the Legislature has pointedly declared to be a corrupt practice—that if it be a corrupt practice in Davidson to keep his tavern open and to sell liquor during polling hours, and the candidate knowingly goes thereto and drinks thereat, it is impossible to say he is not a consenting party to a corrupt practice.

A case was suggested in the argument. We will suppose Davidson closing his tavern according to law, and refusing to give or sell drink to any one. The candidate appears and tells him not to act foolishly, but that it would be better to let people have drink who might desire it. Thereupon the tavern is opened and the candidate accepts a treat from a friend. It was suggested that in such a case the candidate would be responsible, because he would thereby make the tavern-keeper his agent. I do not see that any question of agency would arise. The tavern-keeper acts on the suggestion or the reasoning of the candidate, but he does not thereby become his agent in any sense intelligible to me. If the candidate had in like manner suggested to all the other innkeepers in the constituency to do the same thing, I still do not think he would thereby make them his agents, but it would be most difficult not to hold that therefore the corrupt practice, which is undoubtedly committed by them, would not be so committed with his knowledge and consent.

In short, the only escape that I can see for the appellant from the stringent provisions of the Act, must be our adoption of the argument that the corrupt practice committed with his knowledge and consent can only mean a corrupt practice actually committed by himself or by his agent.

I do not see what right we have thus to narrow the very clear words of sub-sec. 2. I do not consider that we in any way infringe on the rule as to the strict construction of statutes creating penalties and disqualifications. If we adopt the appellant's construction, I very much fear that we should be defeating the clear intent of the Legislature, as evidenced by the plain language used.

The sale of the liquors at the tavern during polling hours is declared to be a corrupt practice. The tavern keeper—the offender against the law—is not shown to be the candidate's agent. The latter is shown to have known of the law being broken, but nothing is proved

to indicate his approval or consent thereto. But the moment we find him drinking at the offending tavern—perfectly well aware that it ought to have been closed instead of being open—then it is beyond my comprehension how I can place such a construction on the words as to hold that the corrupt practice was not committed with his knowledge and full privity and consent.

It was urged on us that the Legislature could not have intended to inflict such a penalty as eight years' disqualification for Parliamentary honors or municipal offices, or offices in the gift of the Crown, for this slight breach of the law. We have considered the case in this aspect with most painful attention.

When a severe punishment is made equally applicable to a case like the present—the acceptance of a glass of beer from a friend at a house illegally kept open—as to a case of the most flagitious and unprincipled bribery, the argument can never be unexpected that the Legislature could not have so intended the law to be. It is a cardinal principle in every good law that it should commend itself to the approval of all well-disposed citizens. It is quite possible that at the passing of this enactment—honestly designed to remedy great evils—the applicability of its severest penalties to a case like the present may not have been directly anticipated.

I agree in the conclusion of the learned Chief Justice, that the appellant acted at least in forgetfulness of the law.

It is for the Legislature to deal with these cases. We can only strive to interpret their meaning by the ordinary rules of construction.

STRONG, J., concurred with the judgment delivered by the Chief Justice of the Common Pleas.

BURTON, J.—I see no way of avoiding the conclusion at which the learned Chief Justice and my brother Strong have arrived. One not unnaturally feels a repugnance to give a decision, the result of which is to inflict, for so slight an infraction of the law, so harsh a penalty upon

a candidate, who, upon the evidence, appears to have been anxious to conduct the election fairly and in accordance with law. The Legislature probably never contemplated the occurrence of such a case as the present, and it is not unreasonable to assume that, had their attention been drawn to it, they would not have visited such an infraction of the provisions of the statute with the same penalties as are aimed at the more grave and disreputable offences of bribery, intimidation, and corrupt practices of that nature. We have, however, to interpret, not to make the laws; and with every anxiety to relieve the appellant from the penal consequences which the decision of the learned Chief Justice of this Court has exposed him to, I can come to no other conclusion than that that decision is a correct one.

We may assume, for the purpose of the present decision, that the only person who is liable to the pecuniary penalty affixed to an infraction of the 66th section is the hotel, tavern or shop-keeper who, in violation of that section, sells or gives to any person spirituous or fermented liquors or drinks within the limits of the municipality during the day appointed for polling. Previously to the Act of 1873 that was the only penalty provided; but that Act in addition makes any violation of it during the hours appointed for polling a "corrupt practice."

Assuming still that the only person who can be said to be acting in violation of the 66th section is the hotel or shop-keeper, and that he alone is guilty of the corrupt practice, by selling or giving liquor during polling hours, I do not see how it is possible to avoid the conclusion that this act, which is, without reference to the intent or motive, declared to be a corrupt act, having been committed with the actual knowledge and consent of the appellant, not only avoids the election, but in addition subjects him to the penalty of disqualification for the period named in the statute.

It was very ingeniously argued that the 1st and 2nd sub-sections of section 3 must be read together; that the

1st sub-section declares that the election should be avoided *for any corrupt practice committed by the candidate himself or his agent*; and that the 2nd sub-section imposes, *in addition* to the avoidances so declared by the 1st sub-section, disqualification when the corrupt act which so avoids the election is done by or with the knowledge and consent of the candidate; but the argument is, to my mind, more ingenious than sound.

Under the 46th section of the Act of 1871, any corrupt practice committed by the candidate, or with his knowledge and consent, avoids the election, and disqualifies the candidate; but no provision is thereby made with reference to corrupt practices by agents without the candidate's knowledge; but the repealing Act of 1873, as I read it, in the 1st sub-section avoids the election for any corrupt practices either by the candidate *or his agent*, whether such act of the agent was committed with or without his knowledge.

And then the 2nd sub-section declares that if *any* corrupt practice—not *such* corrupt practice as under the 1st sub-section would avoid the election, but any corrupt practice—has been committed by (the candidate) or with the knowledge and consent of the candidate—then, in addition to the avoiding of the election (if he has been elected), he shall be subject to the disqualification mentioned in that sub-section.

To give effect to the contention of the appellant, we should have to read the sub-section as if the words “the candidate” were inserted after “by,” and the words “his agent” after “or,” so as to read, “any corrupt practice has been committed by the candidate or his agent with the knowledge and consent of the candidate.” But why should we be called upon to take any such liberty with the plain language of the section, apart from the disqualification. There is much good sense in the Legislature declaring that a tavern-keeper shall keep his bar closed, and shall be subject to a penalty for not doing so, and

that a candidate who encourages him to break the law shall thereby avoid his election.

There are many other corrupt practices, besides the violation of the 66th section, which would not, unless committed by an agent, avoid the election ; and yet it is manifest that if they were done with the knowledge and consent of the candidate, they would—and rightly so—have that effect, and would also have the effect of disqualifying him.

Besides, the 2nd sub-section is not confined to the candidate *who has been elected*, but applies equally to the defeated candidate, who, if found to have been an assenting party to this or any practice declared by the statute to be corrupt, is rendered ineligible to be elected, and to the other disqualifications mentioned in the statute.

The corrupt practice in this case was admittedly committed by Davidson, and was so committed with the actual knowledge and consent of Mr. Stock ; and unless we are to import words into the 2nd sub-section which will entirely alter its plain and natural meaning, it is impossible, in my opinion, to hold that the decision of the learned Chief Justice is erroneous. For my part, I think no other rational conclusion could be arrived at, and that the appeal should be dismissed.

PATTERSON, J.—The facts which, in my judgment, are material to the decision of this case, are not disputed.

There is no doubt that Davidson, a tavern-keeper at Carlisle, violated sec. 66 of the Act of 1868, 32 Vic., cap. 21, by selling and giving spirituous and fermented liquors and drinks to persons in his tavern on the polling day. There is no doubt that this was a corrupt practice in Davidson, under the Act of 1873, 36 Vic., cap. 2, sec. 1. There is no doubt that this corrupt practice was committed by Davidson with the actual knowledge and consent of the appellant, who was one of those who received the liquor or drink, whether he invited the others in and treated them, as some witnesses say, or was treated him-

self along with the others by Sullivan, as it is put by Sullivan, and by the appellant himself.

The question is whether, under these facts, the appellant's election is avoided, and himself disqualified under sub-sec. 2 of sec. 3 of the Act last referred to.

The contention for the appellant is that sub-sec. 2 only applies when the candidate himself, or *his agent* with his knowledge and consent, commits a corrupt practice. It is argued that as sub-sec. 1 makes void the election by reason of any corrupt act committed by a candidate, or committed by his agent, either with or without the knowledge of the candidate, and as sub-sec. 2 does not say in direct words, as was said in sec. 46 of 34 Vic., cap. 3, that a corrupt practice committed by or with the knowledge and consent of the candidate *shall make his election void*, and also disqualify him, but merely says that, *in addition to the election being void*, he shall be disqualified—it must be read as saying, that in addition to the election being void—if under sub-section 1 it would be void—the candidate shall be disqualified; and that unless the election is avoided by sub-section 1, there is nothing in sub-section 2 either to avoid the election or disqualify the candidate. Besides hearing the argument addressed to us in this case, I have had the advantage of reading that part of the very ably argued judgment of Mr. Justice Gwynne, in the *Lincoln case* (*post*), in which he discusses the construction of sub-section 2, and takes the same view which has been urged upon us, although I believe he decided the case on grounds which did not depend on his reading of this sub-section. With the greatest respect for the ability and authority of that learned Judge, and fully appreciating the reasoning which he so forcibly employs, I am unable to agree with him in the construction of the statute.

In 1871, the particular offence now in question had not been declared to be a corrupt practice; but section 3 of the Act of 1871 defined corrupt practices as including bribery and undue influence, and illegal and prohibited acts in reference to elections, or any of such offences as defined

by Act of the Legislature. Under this definition many acts were included which were not necessarily committed by either the candidate or his agent.

Then section 46 of that Act, which declared that where it was found by the Judge that any corrupt practice had been committed by or with the knowledge and consent of any candidate at an election, his election should be void, and he should be disqualified, evidently applied to avoid an election and disqualify the candidate, by reason of the commission by any one, whether his agent or a volunteer, of any corrupt practice with the knowledge and consent of the candidate. What was not provided for by that Act was the avoidance of the election in case the agent, without the knowledge or consent of the candidate, committed a corrupt practice. This omission has been supplied by sub-section 1 of section 3 of the Act of 1873; and the object of passing this section 3 probably was to supply this omission.

Having regard to the course of legislation with respect to purity of elections, which has tended constantly towards greater strictness in the provisions for repressing every act and contrivance by which the perfect freedom and honesty in the exercise of the franchise may be interfered with; and this policy being distinctly apparent in several of the provisions of the Act of 1873, particularly in the extension of the definition of corrupt practices by sec. 1, there is no reason to suppose that the Legislature intended that any election which would have been avoided under the Act of 1871 should stand good under the Act of 1873; or that while a new ground for avoiding an election was added, viz., when an agent, without the candidate's knowledge or consent, committed a corrupt practice, it was intended to declare that a corrupt practice, committed with the knowledge and consent of the candidate, but by one who was not his agent, should no longer either affect the seat or work any personal disqualification.

It would require language very clearly enacting such a change to have the effect contended for. We must not

regard the question as relating only to the selling of liquor at taverns. It extends to bribery, undue influence, and all other prohibited acts which, according to the contention of the appellant, may now be committed or practised by volunteers, with the knowledge and consent of the candidate, without any further risk than the risk of destroying the vote that is influenced, and incurring the pecuniary penalty. If it is answered, that by the candidate's consent the volunteer becomes *ad hoc* an agent, so does the tavern-keeper.

The contention is founded on the assumption that the words in sub-sec. 2, "in addition to his election, if he has been elected, being void," do not carry with them a declaration that the election shall be void, and that there is nothing else in the sub-section which has the effect of avoiding the election.

Let us test this by reading section 3 as applying to a defeated candidate. He will not be touched by sub-sec. 1, as he has not been elected; and when we simply omit from sub-sec. 2 the words which do not concern him, viz., "in addition to his election, if he has been elected, being void," every word that remains is perfectly applicable to him. There is no doubt of his disqualification by reason of a corrupt practice being done with his knowledge and consent.

If it is still urged that the first sub-section, though not in terms affecting a defeated candidate, must nevertheless be read with the second, or that the second must be read in the light of the first, as if the words were, "by the candidate or *by his agent*, with his knowledge and consent," I answer that instead of importing into sub-section 2, words which cannot be so introduced without doing some violence to the structure of the clause, it will be much more in accordance with the spirit and object of the Act, if any change of reading is to take place, to read the first sub-section by a slight transposition, as if worded thus: "When it is found . . . that any corrupt practice has been committed at an election by any can-

didate *who has been elected*, or by his agent, whether with or without the actual knowledge or consent of such candidate, the election of such candidate shall be void," which in no way changes the effect of the sub-section; while, as it seems to me, it removes any pretence for modifying the reading of the second sub-section by any reference to the first, at all events as far as the defeated candidate is concerned.

Then, is a defeated candidate to be disqualified on grounds which do not affect a successful candidate? The sub-section cannot be so construed. And if we read the disqualifying clause, we find that the candidate is made incapable not only of "being elected to," but "*of sitting in*, the Legislative Assembly" "during the eight years next after the date of his being so found guilty"—a provision which of itself vacates the seat without the aid of the preceding part of the sub-section.

I do not, however, see any necessity for resorting to any subtlety of construction. The plain words of the section are, in my opinion, easily intelligible as they stand—the natural meaning being that a candidate, if elected, shall lose his seat in case a Judge reports that any corrupt practice has been committed by him or his agent: that if a candidate commits or consents to the commission of any corrupt practice, he shall be subject to the penal disqualifications, which, if he has been elected, include, but are not confined to, the vacation of his seat.

Appeal dismissed with costs.

(9 *Journal Legis. Assem.*, 1875-6, p. 12).

NORTH GREY.

BEFORE MR. JUSTICE GWYNNE.

OWEN SOUND, 29th June and 2nd July, 1875.

BEFORE THE COURT OF APPEAL.

TORONTO, 18th and 25th September, 1875.

THOMAS BOARDMAN, *Petitioner*, v. THOMAS SCOTT,
Respondent.

Political association—Agency—32 Vic., cap. 21, secs. 61-66—Treating a meeting of electors—Treating during polling hours.

The fact of a political association putting forward and supporting a particular candidate does not make every member of the association his agent; but the candidate may so avail himself of their services in canvassing for him and promoting his election, as to make them his agents.

One W., a member of a political association, treated the members of the association present at a meeting in a tavern.

Held, That the members so present were electors assembled to promote the election of the respondent within s. 61 of the Election Law of 1868, and that such treating was a corrupt practice by W.

One M., the reeve of a township, exerted himself strongly in favor of the respondent, to whom he was politically opposed, and against the other candidate, and attended meetings where the respondent was, and spoke in his favor. The reason for his supporting the respondent and opposing the other (ministerial) candidate, with whom he was politically in accord, was, that the ministry of the day had separated the township of which he was reeve from the Riding. He was annoyed and indignant at this separation, and announced his intention of using all his influence against the ministerial candidate. The respondent asked M. to attend a public meeting, which he did; and at another meeting which he attended, M. stated (but not in the respondent's hearing) that he was acting there on the respondent's behalf. M. was once in the respondent's committee-room, and signed and circulated circulars issued by the respondent's friends.

Held, That the question of agency being one of intent, the respondent, under the circumstances, never conferred upon M. the authority, nor did M. accept the delegation, of an agent for the purposes of the election.

The respondent, during polling hours on the polling day, met one P., a supporter of the opposing candidate, and told him he would like a drink; and both of them, not thinking it illegal, went to a tavern, and the bar being closed, P. treated the respondent in the hall of the tavern.

Held by the Court of Appeal (reversing *Gwynne, J.*), That the receiving of a treat by the respondent during the hours of polling was a corrupt practice and avoided the election.

Seemle, per Gwynne, J., that as to the seller or giver of the treat, the only person liable to the penalty of \$100 would be the tavern-keeper, as the statute does not authorize two penalties for the same act.

The petition contained the usual charges of corrupt practices.

Mr. J. K. Kerr for petitioner.

Mr. M. C. Cameron, Q.C., for respondent.

The cases relied upon by the counsel for the petitioner at the close of the evidence, as sufficient to invalidate the election of the respondent, are stated in the judgment.

GWYNNE, J.—I propose to deal with these heads of complaint, upon which, after hearing all the evidence, the petitioner, through his counsel, rests his case, in a different order from that in which they were taken, and I shall deal lastly with the most serious, involving a grave charge, affecting not only the conduct and character of the respondent, but his civil status for a period of at least eight years, if the charge is established.

No duty can be more painful, and sometimes more difficult, for a Judge to discharge than that of estimating with discrimination and with due regard to the interest of the public on the one hand, and to that of the accused on the other, the proper weight to be given to evidence in support of, or in refutation of, charges of personal bribery. There are so many things to be considered. We must be careful not to be too hasty in rejecting the accusatory evidence as coming from a tainted source, for in cases of this kind it is frequently by the recipient of the bribe alone that the offence can be proved. Of the general character of the accuser we frequently know little. Although the recipient of a bribe, his truthfulness may be as reliable as that of the accused, who always has a strong interest to maintain his position, even at the expense of his veracity; but again, the accuser may be a person of such a character and habits as to make it difficult to place implicit confidence in his statements, although it may be impossible to adduce evidence such as the law requires to impeach the witness as unworthy of belief. We must, therefore, in all these cases scan with care all the surrounding circumstances, for the purpose of determining upon which side the truth lies, namely, whether upon that of him who, while accusing another,

accuses himself also, or upon that of him who asserts only his own innocence. Every case must depend upon its own circumstances; the manner of the witnesses as well as the matter of their evidence must be diligently noted; and after all, all that a judge can do is to express the honest conviction which the whole evidence and bearing of the witnesses have impressed upon his mind.

First as to the charge of corrupt practices committed by George Wright, in treating at meetings of committees in his own tavern. That a candidate may so avail himself of the services of members of a political association, in canvassing for him and promoting his election, as to make them his agents, for whose acts he shall be responsible, there cannot, I think, be any doubt; but nothing could be more repugnant to common sense and justice than to hold that because a political association puts forward or supports a particular candidate, therefore every member of that association becomes *ipso facto* his agent. The meetings which took place at Wright's tavern were of members of an association called the Liberal-Conservative Association. None of the members so meeting were members of the respondent's committee. A convention, as it is called, of that association had put forward the respondent as the person recommended to the support of the members of the association. What was done at these meetings, or for what particular purpose they were assembled, did not very clearly appear; it may be admitted that the members of the association who assembled at Wright's were electors assembled to promote the election of the respondent within the 61st sec. of the Act of 1868 as amended by the Act of 1873, so as to make Wright himself guilty of corrupt practices in supplying drink to them at or immediately after their meetings; but they were not, that I can say, in any sense the agents of the respondent, or in any way authorized by him, nor does it appear from anything in the evidence that he had any knowledge of their meeting. The evidence shows that when the respondent had a meeting himself at Wright's,

there was no treating within the meaning of the 61st section, and I can therefore arrive at no other conclusion upon this head than that it is not proven, in so far as the respondent is concerned, or so as to affect him; although, as affects Wright himself, he has sufficiently admitted the charge to subject him to being reported as having been guilty of a violation of the section referred to.

As to the corrupt practices charged as having been committed by Dr. McGregor at Desborough, Chatsworth and Williamsford (although whether or not there was treating by him at Chatsworth does not appear to be clearly established), there is, I think, sufficient established to subject *him* to all the consequences annexed to the violation of the 61st section of the Act; but whether or not the respondent is to be affected by his conduct depends upon whether Dr. McGregor was or was not an agent of the respondent, for whose conduct the latter is to be held responsible.

It has been in different cases said that no one can lay down any precise rule as to what will constitute evidence of being an agent. Each case must depend upon its own circumstances. Definitions may be attempted, but none can be framed applicable to all cases. "It rests with the judge," as is said in the *Wakefield case* (2 O'M. & H. 103), "not misapplying or straining the law, but applying the principles of law to changed states of facts, to form his opinion as to whether there has or has not been what constitutes agency in these election matters." We have, however, the opinions and sayings of some very learned Judges to guide us in arriving at a just decision, and first I may place the observations approved by Keogh, J., in the *Sligo case* (1 O'M. & H. 301), as a rule of general application, namely, "that the evidence ought to be strong, very strong, clear and conclusive of agency before a judge allows himself to attach the penalties of the Corrupt Practices Prevention Act to any individual."

The language of Baron Channell in the *Shrewsbury case* (2 O'M. & H. 36), and of Mr. Justice Mellor in the *Bolton*

case (2 O'M. & H. 140), is also instructive. The former says, "Canvassing will only afford premises from which a judge discharging the functions of a jury may conclude that agency is established;" and again he says, "I wish it to be understood how far, in my opinion, from mere canvassing those acts must be from which you may infer that kind of agency which is to fix the candidate with responsibility for the act of a person acting in his behalf." And Mr. Justice Mellor says, "The fact of a man having a canvass-book is only a step in the evidence that he is a canvasser *authorized by the candidate's agents*; if you want to go further call the canvasser, because the mere fact of a man having a canvass-book and canvassing, cannot affect the principal *unless I know by whom the man was employed*. There is nothing more difficult or more delicate than the question of agency; but if there be evidence which might satisfy a judge, and if he be conscientiously satisfied that the man *was employed to canvass*, then it must be held that his acts bind the principal. I should not, as at present advised, hold that the acts of a man who was known to be a volunteer canvasser, *without any authority* from the candidate or any of his agents, bound the principal."

The question, as it seems to me, may be said to be one of intent. Did the candidate depute and authorize the person to be his agent, and did the person so authorized accept the deputation? If so, to what extent; namely, was it for the performance of a special isolated act, or for a few special acts, or was the appointment as agent generally, but with powers confined to a limited district, constituting part only of the electoral division, or was the appointment as agent general, extending over all parts of the electoral division? For upon the nature and extent of the authority conferred and accepted must depend the nature and extent of the liability of the principal. What the nature and extent of the agency is, may be established by direct positive evidence, or may be inferred from the acts and conduct of the parties; but all inference is ex-

cluded if the evidence ignores any intention upon the part of the parties either to confer or accept authority, and at the same time shows with reasonable certainty that acts, which in certain events might be sufficient to warrant the drawing an inference of an authorized agency having been created, are attributable to or explicable by other influences affecting the mind and conduct of the party alleged to be an agent in the performance of the acts relied upon as establishing the agency. In such case there is no agency, and the party assumed to be a principal cannot be affected by the acts of the other.

Now, in the case of Dr. McGregor, the facts may be briefly stated to be, that having heretofore been a member of the party to which the respondent had been always opposed, and being a public man of considerable importance and public influence in the township of Holland, recently by Act of Parliament separated from the North Riding of Grey, and being very much annoyed and indignant, upon public grounds or otherwise, with the separation of his township—of which he had been just recently elected reeve—from what he conceived to be its geographical connections, he resolved to use all his influence to oppose the ministerial candidate for this Riding. He publicly announced his intention of so doing, as I gather from the evidence, at the close of the meeting at which the nomination took place, or I should say previously, for some of his former friends seem upon that occasion to have called him a turncoat, which led to some warm altercation.

The respondent formed a committee to act as his agents to promote his election. Dr. McGregor was not one, nor does he appear to have been ever asked to be one. It is relied upon, that upon one occasion he was in the respondent's committee-room; but the evidence shows that this was for the purpose of consulting his local knowledge as to the most suitable places at which to call public meetings of electors in his neighborhood, having regard to the then condition of the roads—the great depth of snow rendering

most places inaccessible. He also was referred to in a printed circular as a person, with others, capable of refuting and proving to be untrue certain charges which had been made by the opposing candidate's friends, in a paper printed and circulated by them against the respondent, and he may perhaps have signed the paper for the purpose of testifying his willingness and his ability to refute the charges. He took also some of these circulars into the neighborhood where he resided. An honorable man may surely express his willingness to refute, if in his power to do so, false charges made by one candidate or his friends against the other, without being held to be the agent of the latter.

Upon one occasion the respondent, when passing through Chatsworth, where the Doctor resides, asked him to come to a public meeting convened at Desborough. True, the Doctor was not an elector in the Riding, but he was a public character in the adjoining township, and had, as the respondent no doubt knew, expressed his determination, as a public character, to take a very serious part in this election. The respondent does not appear to have asked the Doctor to come to the meeting to speak upon his behalf. He thought perhaps that it was very likely he would speak if he should come, and that if he should speak, the subject of his oration would be the condemnation of the ministerial candidate, and the running sore which, for the present at least, had alienated him from his party. The respondent, indeed, very probably thought that the Doctor could not and would not stay away, and it may be conceded that he was not unwilling to derive whatever benefit should result to him as the natural consequence of this alienation. The evidence has satisfied my mind that the respondent's asking the Doctor to go to the meeting had very little influence upon him, for the Doctor confesses, I think beyond all doubt—at least this is the impression he conveyed to my mind—that he had mounted a hobby of his own which was very high mettled, and from which he had no intention to dismount

until he should either fail or succeed in effecting the object for the time being nearest to his heart, namely, damaging as far as he could the ministry that had withdrawn his township from the Riding by the defeat of the candidate who had been put forward in their interest ; and I have no doubt—at least such is the impression left upon my mind—that he never entertained the idea of merging his own independent quarrel on behalf of the township of which he was reeve, and which he regarded as a matter of grave public moment, in the mere agency of an individual, nor do I think the respondent had any idea that he had enlisted the Doctor in the capacity of an agent. Such an idea, I have no doubt, never entered the mind of either the one or the other.

It is said that at the Chatsworth meeting, which was held in the limits of the Doctor's own township of Holland, he, in the presence of the respondent, stated that he was acting there on the respondent's behalf. Now, with respect to what actually took place there, there is much discrepancy of opinion. The gentlemen opposed to the Doctor do not themselves agree as to what did take place, one thinking the Doctor's remarks were confined to the particular act of insisting to know how many of the opposing candidate's friends intended to speak, for they seemed to be numerous, before they should proceed further, and that he made this demand on behalf of the respondent; others attributing a wider signification to his words, namely, that he was there attending the meeting on the respondent's behalf. The Doctor himself says, that what he said was, that the meeting was being held in his own township of Holland, of which he was reeve, and that therefore he had a right to interfere. The respondent says that he was in and out of the room, and that he did not hear the Doctor make use of any such expression as that he was interfering upon his, the respondent's, behalf, or that he was there upon his behalf. All admit that there was great noise and confusion made upon the Doctor's interference, so that I can well conceive it very

possible that no one can very accurately tell us what was in fact said; but assuming that the Doctor did make use of the language attributed to him, in the sense strongest against the respondent, I can well conceive that in view of the position in which the respondent found himself outnumbered by the friends of his opponent, he may well desire to avail himself of the powerful aid of the Doctor in that particular emergency to secure an equality of the number of speakers on either side without making the Doctor his agent generally, so as to be affected by his acts out of doors in the indulgence of a habit which is so strong upon him, as he says, of treating his friends upon all occasions when he meets them away from home, that he could not resist doing it, though at the peril of the penalties attending a plain violation of the law. Upon the occasion of this meeting at Chatsworth, the witnesses say that the Doctor claimed to be of more importance than the respondent. This view seems precisely to accord with what the Doctor himself gives us to understand, in virtue of his dignity as reeve in his own township; and I confess that the evidence has impressed my mind very strongly, as I should think it probably would every one who came in contact with the Doctor during the contest, that whatever he did was done in the carrying on his own independent battle, waged with the ministerial candidate for his own reasons and with his own objects. I mean, of course, public reasons and objects in connection with the particular matter which gave him offence, and not in any sense as the agent of the respondent, a position which I am satisfied the respondent never conferred upon him, nor did the Doctor assume. The constitution of our municipal institutions is such, that it is not meet that public men should be fettered in the expression of their political sentiments, or in their right to address public meetings of electors during election contests, by any fear that, contrary to their intent, their public sentiments as expressed at those meetings should be attributed to mere advocacy as the agent of a

candidate who may perhaps hold a few, and only a few, opinions in common with them. Nor is it meet that candidates should be exposed, against their will, to the peril of having persons presumed to be their agents whom they have not made and never intended to make such, merely because from their own public standpoint they declare themselves opposed to the election of the other candidate, and advocate—it may be perhaps as the lesser of two evils—the election of his opponent. Under these circumstances I cannot hold the respondent accountable for the corrupt practices of the Doctor, who himself must bear the consequences attendant upon his own violation of the law.

There remains to be considered the last ground relied upon, namely, that Mr. Paterson had treated Mr. Scott, and that this was in violation of the 66th section of the Act of 1868.

The facts relating to this charge are, that the respondent, between 3 and 4 o'clock in the afternoon of the polling day, when going down the stairs from one of the polling places in Owen Sound, in company with Robert Paterson, a supporter of the opposing candidate and one of the petitioner's sureties, not having had, as respondent says, any refreshment since 8 o'clock in the morning, and not having his sleigh at hand to take him home, expressed himself to his friend Mr. Paterson in some such terms as follows: "Is not this a hard law; I have had nothing since 8 o'clock, and I should so like a drink;" whereupon Mr. Paterson very kindly, according to the respondent's version, said that he would give him a glass, not thinking this mode of giving refreshment to the respondent to be illegal, or, according to Mr. Paterson's version, the respondent asked Mr. Paterson to treat him, which Mr. Paterson agreed to do, both believing this to be legal. Accordingly they went over together to Spiers' hotel, where the bar being closed against the public, they procured Spiers to get them each a glass of ale, for which Mr. Paterson paid, and which they drank in the hall of the hotel.

The contention now is, that this conduct constitutes a violation of the 66th section, not only by Spiers, the tavern-keeper who sold the ale, but also Paterson, who purchased it and gave a glass to Scott, and by Scott, who drank the glass so given to him. Paterson, according to this contention, is liable in two capacities: 1st, as the giver of a glass to Scott; and 2nd, in drinking one himself; and lastly, Scott, as it is contended, is further liable, not merely as having drank the glass which Paterson gave him, but also for having asked Paterson to give him the glass, as he did if Paterson's version be accepted; and both of them, for having asked Spiers to sell the ale. And so it is contended that for this act the election is not only void, but that Scott is disqualified personally.

The argument is, that it is a violation of this clause of the Act for any person, whether tavern-keeper or shop-keeper, or not, during polling hours to sell or give any spirituous or fermented liquors whatever, whether by retail or wholesale, to any person, whether an elector or a perfect stranger, and whether it be sold for consumption in a private house or for transportation abroad even to a foreign country. For example, if any person within the municipality takes a friend who does not live within the municipality, and is not an elector, home to dinner with him, and gives him at his dinner a glass of ale or wine within the polling hours; or if any person, within the same hours and within the municipality, sells to any person, though not an elector nor living within the municipality, a hogshead of brandy to be transported abroad, and ships it in the ordinary course, the statute, it is contended, is violated both in the giver and the receiver in the one case, and in the vendor and the vendee in the other. Whether or not this is the true construction of the Act, I do not feel myself at present called upon to express an opinion, and therefore reserve my opinion until some such case shall arrive, if it ever shall. At present I am called upon to go further than either of the above cases, and to declare that to be a violation of the law which, beyond all ques-

tion, is not within its letter, but which, as is contended, is within its spirit and intent.

The Act of 1873, which makes all violations of the 66th section which are committed within the polling hours to be corrupt practices, does not make anything to be a violation of that section which was not so before. The question, therefore, must be considered wholly irrespective of the Act of 1873, the simple question being, has there been a violation of the 66th section of the Act of 1868; and if so, by whom? Assuming for the sake of argument that the second branch of this 66th section has no connection whatever with the first, and is to be read without any light from the previous part, then what the section says is, that no spirituous or fermented liquors or drinks *shall be sold or given* within the limits of such municipality during polling day under a penalty of \$100.

The question then resolves itself into this: Is the receiver or drinker of the liquor liable to a penalty under this section, and also the seller to another, and also the giver, if there be a person who buys and treats another?

The contention here is, that for every glass sold by the tavern-keeper he is liable to a separate penalty, and for each glass so sold to a person who treats others the treater is liable to a separate penalty as giver, and for each same glass the drinker is liable to a distinct penalty. In this view, assuming twenty persons to be treated by a person intervening to purchase and give, the penalties recoverable under the Act would amount to \$6,000.

The simple answer to this contention, it appears to me, in so far as the respondent is concerned, is that no judge has any jurisdiction to extend a penal statute so as to create a penalty which the statute itself has not in express terms created. The statute in its terms imposes no penalty upon one who receives and drinks; it is said that it should be construed as doing so, because that morally the receiver is as culpable as the seller and giver, and that if there were no one to receive and drink, there would be no one to sell or give. Grant this to the fullest extent

With the ethics of the case I am not at present concerned. The same may be and often is said of the receiver of stolen goods, yet a receiver was never for that reason liable to be indicted for the larceny, nor could he have been indicted without a special Act constituting the act of receiving a distinct offence. Then again, it is said that the person who procures an act to be done by another is himself a principal and so liable. That, no doubt, is a rule of law and a very good one in its place, but it is not of universal application. A man who procures another to sell his farm and to lend him the money, is not himself the vendor, nor is the rule of universal application in the case of crime. A man who procures another to commit bigamy is not himself guilty of bigamy.

These and like suggestions are all lost in the consideration that it is impossible for a judge to pronounce that to be criminal or penal which, without an Act of Parliament, is neither the one nor the other, unless he has the authority of the Legislature unqualifiedly conveyed in express terms for doing so. He cannot proceed upon a suggestion of constructive guilt. This seems to afford a complete answer to the point, in so far as the respondent is concerned.

In so far as Mr. Paterson as a giver is affected, I shall content myself at present with saying that I do not think the statute authorizes two penalties in the case, and therefore for this act of treating I shall not report him as guilty of a corrupt practice within the Act. Whether or not the Legislature contemplated, when passing the 66th section, to impose a penalty upon the tavern-keeper for such a single act as is proved here, may perhaps be open to doubt; but as he comes within the express terms of the section, even though we should read the second branch as dependent upon and connected with the first, I feel compelled to report him as guilty.

The result is, that I adjudge, declare and determine, that the said Thomas Scott, the above respondent, was duly elected as member of the North Riding of Grey, and

that the petition against his return be and is hereby dismissed with costs, to be paid by the petitioner to the respondent; and I shall have to report as guilty of a violation of the 61st section of the Act of 1868, the following persons, viz.: Dr. Duncan McGregor, George Wright, John Hill and Edmund Haynes. Some evidence was also given against one Hutton, but as he was not called himself, and his first name did not appear in the evidence, I am unable to report him. I shall have also to report Thomas Spiers as guilty of a violation of the 66th section of the same Act.

The petitioner appealed from the decision of Mr. Justice Gwynne to the Court of Appeal.

The COURT (Hagarty, C. J. C. P., Strong, Burton, and Patterson, JJ. A.), following the judgment in the *North Wentworth* case (*ante* p. 343), reversed the decision of Mr. Justice Gwynne, and held that the giving of the treat by Paterson, and its acceptance by the respondent during polling hours on polling day, was a corrupt practice committed by Paterson with the knowledge and consent of the respondent, and that the election was avoided.

The costs of and incidental to the petition and appeal were ordered to be paid by the respondent to the petitioner.

(9 *Journal Legis. Assem.*, 1875-6, p. 15).

NORTH MIDDLESEX.

BEFORE CHANCELLOR SPRAGGE.

LONDON, 14th, 15th, 20th and 28th September, 1875.

JOHN CAMERON, *Petitioner*, v. JOHN McDUGALL, *Respondent*.*Evidence—Proof of letter—Bribery—Offers made in jest—Meeting of electors—Treating—Usual custom of treating by candidate.*

A witness stated that he had received a letter from a voter, asking for the fulfilment of an offer as to his vote, but the letter was not produced.

Held, that it was not proved that the letter in question was written by the voter referred to.

On a charge that one O. bribed a voter by promising to procure a deed of his land for him if he would procure votes for the respondent, the evidence showed that though the voter had so represented, the procuring of the deed had nothing to do with the election.

One S., an alleged agent of the respondent, made offers of sheepskins to two voters as to their votes at the election, but he swore the offers were made in jest; but as the evidence did not show that S. was an agent of the respondent at the time of the alleged offers, no effect was given to the charge.

A statement that an offer to bribe was made in jest should be received with great suspicion. A briber may make an offer which he intends should be taken seriously, and then, if not accepted, he may assert it was made in jest.

After the nomination of candidates on the nomination day, and on another occasion, after a "meeting assembled for the purpose of promoting the election," and after the business for which the electors had assembled was over, the electors left the building in which the meeting was held and dispersed to various taverns, at which their vehicles had been put up, and then before leaving for home treated each other; and at one of the taverns the respondent himself partook of a treat.

Held, 1. Not furnishing drink or other entertainment to meetings of electors within s. 61 of the Election Law of 1868.

2. That the meeting of electors for the nomination of candidates, is a "meeting assembled for the purpose of promoting the election."

Treating is not *per se* a corrupt act, except when so made by statute; but the intent of the party treating may make it so, and the intent must be judged by all the circumstances by which it is attended.

Seemle, where it is done by a candidate in order to make for himself a reputation for good fellowship and hospitality, and thereby to influence electors to vote for him, it is a species of bribery, which would avoid his election at common law.

When the respondent who, in the course of his business as a drover, had been in the habit of treating at taverns, treated during his canvass, but to a less extent than was his habit, and not apparently for the purpose of ingratiating himself with the electors;

Held, under the circumstances, that such treating was not corrupt, and his election was not avoided.

The petition contained the usual charges of corrupt practices.

Mr. J. K. Kerr for petitioner.

Mr. R. A. Harrison, Q.C., and Mr. Duncan MacMillan for respondent.

A witness, William Stevenson, who had offered one William Robson a sheepskin if he would stay at home on election day—referred to in the judgment—during his examination said that Robson afterwards wrote to him asking for the sheepskin, but the letter was not produced. For the defence a witness was called to prove the handwriting of the letter sent to Stevenson.

Mr. Kerr objected. The letter must be produced. Evidence of the letter having been sent was given by the petitioner, but no evidence of handwriting.

SPRAGGE, C.—I hold that it is not proved by the petitioner that the letter in question was written by the person in whose name it is said to have been written.

The facts upon which the case was disposed of appear in the judgment.

SPRAGGE, C.—I will consider first the alleged bribery of Michael Sullivan by Robert O'Neil. Sullivan was in possession of a Canada Company lot, and there was a difficulty in regard to his getting a deed of it from the Company. The charge is that O'Neil held out to him that if he procured electors to vote for the respondent he would aid him in procuring for him the deed from the Canada Company, and it is represented that the getting out of the deed was intended to be kept hanging over the head of Sullivan as a spur to his exerting himself in procuring votes; and, though in fact obtained before the election, it was only very shortly before, and its procurement expedited in consequence of the commencement of an action of ejectment by the Canada Company.

The intention to postpone the procurement of the deed till after the election is not denied, but it is alleged that it was for a sufficient reason, viz., lest its being procured pending the contest might be laid hold of by the opposing

candidate, Mr. Smith, or his friends, as a handle, as O'Neil in his evidence expresses it, to impute a corrupt practice upon Sullivan by O'Neil. There was no need, it is said, to bring any undue influence to bear upon Sullivan, or to bribe him by any inducement to support the respondent, inasmuch as he was already, and had been previously, a warm supporter of the party to which the respondent belonged, and would in any event have supported him. It is agreed that the action of O'Neil in the procurement of the deeds was accelerated in consequence of the issuing of process in ejectment. Something was said in evidence of a petition being got up among Sullivan's neighbors, connecting in some way the application of Sullivan for a deed with the election, and that the neighbors were led to believe by Sullivan himself that his interests would be promoted in the matter of the procurement of the deed by his obtaining votes for the respondent. That is in substance the case made by the petitioner, but in my opinion the facts proved do not support it. Much sympathy was felt for Sullivan (by his neighbors), who had lived upon and improved the land, a deed of which he was seeking to obtain, and a petition was talked of among them, but it was a petition to the Canada Company. It was not suggested by O'Neil, who discouraged the idea, nor does it seem to have had anything to do with the election. I say this, discarding the evidence of what Sullivan is reported to have said about it, and about O'Neil's agency in obtaining the deed. Sullivan says in his evidence, that O'Neil spoke of the respondent as a good liberal man, or may have so spoken of him. This was said to Sullivan, who had not known him before. It is contended that I must infer that this was said (assuming it to have been said at all) in order to lead Sullivan to believe that the respondent would be liberal in aiding him in money or otherwise—I suppose in money—in the procurement of his deed. It is true that O'Neil *may* have spoken of the respondent as a good and liberal man, and in connection with the obtaining of the deed, and of

Sullivan exerting himself on his behalf in the election. But this is not proved. Sullivan does not seem to have supposed that his support of the respondent had anything to do with the getting of his deed from the Canada Company. He says he asked only one person to vote for him, and O'Neil says very distinctly that his getting out the deed from the Canada Company was purely a business transaction, of a kind to which he was in the habit of attending; that Sullivan and another—one Fahey—employed him for that purpose, and for himself, that he went to Toronto on behalf of both, and that Sullivan paid him \$12 for his expenses and trouble. He denies very explicitly that Sullivan's support of the respondent had anything to do, so far as he was concerned, with the matter, and I think the proper conclusion from the evidence is that it had not.

I have thought it well to discuss this question, as it was a prominent matter in the investigation before me, but I at least doubt whether O'Neil was an agent for whose acts the respondent was responsible.

Two direct corrupt acts are charged to have been committed by William Stevenson, an agent, it is alleged, of the respondent, consisting in the offer to one George Shibley of a sheepskin if he would vote for the respondent, and in the offer to one William Robson also of a sheepskin if he would stay at home on election day. Shibley and Robson are not called upon this charge, but William Stevenson only. The defence is that these offers, which were both made on the same day, were never seriously made, and that it was well understood by both Shibley and Robson that they were made in mere jest. Stevenson, in his evidence, says that Shibley is a man of wealth and a magistrate, and as I understand his evidence, the offer came from him that he would vote for the respondent if Stevenson would give him a sheepskin. The witness describes Robson as a storekeeper living in Carlisle. He swears that he looked upon these offers as in jest, and felt sure that they were so regarded by Shibley and Robson.

A statement that an offer to bribe was made in jest should be received with great suspicion. A briber may make an offer which he intends should be taken seriously, and then, in the event of its not being accepted, shelter himself afterwards with the plea that it was only in jest; but looking at the position of Shibley and Robson, and the nature of the thing offered and its value—a dollar or less—it is probable that Stevenson speaks the truth when he says that it was but a jest. The case, however, is divested of all difficulty by the circumstance that Stevenson was not at the time an agent of the respondent. The matter occurred in the autumn before the snow fell—the witness thinks in October; and it was long afterwards, and, as the witness thinks, after the public nomination, which was on the 11th of January, that he received a communication from Gilchrist, financial agent of the respondent, asking him to canvass a school section. There was nothing shown to constitute him an agent before that.

Another point taken by the petitioner is this, that there were meetings of electors within the meaning of section 61, at which there was treating within the meaning of that section, and that the same being with the actual knowledge and consent of the respondent, he thereby loses his seat, and is disqualified. Mr. Kerr's contention upon this point is, that it is immaterial whether the treating was by the candidate himself or by an agent, or by a stranger, and that the motive and intent are, under the section as amended, immaterial; that all that is necessary to bring the case within the section is, that the treating is to a meeting of electors, such as is described in this section, and that it is with the actual knowledge or consent—which Mr. Kerr reads, knowledge *and* consent—of the candidate.

I incline to agree with this interpretation of the section, and in the *Dundas case* (*ante* p. 205) I acted upon a like construction then put upon it by myself, with this difference, that in that case the treating was by an agent of the candidate, not by a stranger. But I thought in the *South*

Essex case (*ante* p. 235), that a corrupt practice participated in by an agent, being by his participation a party thereto, would avoid the election. This was under the second provision of section 66; and this construction has now, I understand, been approved by the Court of Appeal. But my difficulty in this case is upon the question whether the treatings in question were to meetings of the electors within the meaning of the section. I take the meeting on nomination day and at Elson's as examples. I take the meeting held on that occasion (the nomination) to have been a meeting within the section. The meeting at Elson's, while of a different character, was still, in my opinion, a meeting of electors, assembled for the purpose of promoting the election; and if the treating had been, in any proper reasonable sense, a treating to electors so assembled, I should hold it to be a corrupt act. But there are these material circumstances to be taken into account: North Middlesex is a rural constituency; the electors attending these meetings were for the most part from a distance; their horses and conveyances would be put up in the stables and driving sheds of the taverns of the place; the meetings were in January, and the weather is described to have been very cold. Then there is the custom of the country—not to be commended, but still to be taken into account—to take drink in the bar-rooms of taverns, and to do so in the shape of treating some or all of those assembled with them in the room, “the crowd,” as it is so often called. Now, what was done upon the occasion in question was in substance this: After the business for which the electors had assembled was over, they left the building in which the meeting had been held, and went, some to one tavern, some to another; generally, as I infer, to those at which their vehicles were put up, and before leaving for home took drink in the bar-rooms in the usual mode—that of treating one another. I cannot think that doing this is in any proper or reasonable sense giving drink or other entertainment to a meeting of electors assembled for the purpose of promoting an election. It

is indeed doubtful whether there was treating on any of those occasions by any agent of the respondent; and it now appears that there was not any treating by the respondent himself, but the respondent himself partook of the treat on one at least of these occasions in the bar of a tavern.

I am not in the least disposed to sanction any evasion of the law, or to insist upon too rigid a construction of the provisions of the section. It would indeed be a rare case, if a possible one, that treating should be given literally to a meeting of electors. It was not so in the *Dundas case* (*ante* p. 205), in which I applied the Act; but what was done in this case is not in my judgment within the spirit and meaning of the Act. To apply it to what was done in this case would be in my opinion straining the provisions of the sections beyond their legitimate meaning and intent.

Upon another branch of the case I have entertained considerable doubt. It has been in regard to treating by the respondent at various taverns in the course of his canvass, which occupied about three weeks before the polling day. The respondent is a farmer, and has for the last sixteen years followed the business of a drover. He says that it is the practice of drovers to go to taverns as the best places for meeting with farmers and hearing of cattle, and that he has always been in the habit of treating at taverns in the course of his business, and this is confirmed by the evidence of other witnesses. He states that when he became a candidate he canvassed personally through the Riding, and went to the taverns as good places to meet with the electors; that on these occasions he sometimes treated; sometimes friends who were with him treated; and the treating was sometimes by others who were not friends; and the treating was general to all who might happen to be present. As to its extent, he says it was much less than was his habit in the course of his business, not more he says than one-fifth as much; he denies emphatically that he treated with any view of influencing

voters ; that he made no distinction as to whom he treated ; that he had taken legal advice ; that he meant to obey the law, and thought that in what he did he committed no infraction of the law. As to which last, I will merely observe that if what he did was really an infraction of the law, his being advised and his entertaining the belief that it was not so, would be no excuse in the eye of the law. The treating upon these occasions stands upon a different footing from meat, drink, &c., furnished to a meeting of electors, to which I have already adverted.

The law upon this branch of the case differs from the law prevailing in England in this, that we have not in this Province any enactment equivalent to section four of the Corrupt Practices Prevention Act. The Imperial Act of 1854 makes corrupt treating a statutable offence ; treating therefore—not to a meeting of electors—can only be reached by the common law, and must be of such a character as to amount to bribery. ✓

It is not contended by Mr. Kerr that the case comes within the old Treating Act, 7 William III., c. 4, which forbids treating within certain times specified, “ in order to be elected or for being elected.” I do not know whether it has been decided that the Act is in force in Canada, but it appears, as interpreted in *Hughes v. Marshall* (2 C. & J. 118), to be in affirmance of the common law, inasmuch as treating “ in order to be elected ” is only a species of bribery. The same may be said, I think, of the Act of 1854, for to bring a case within that Act, the treating must be with a corrupt intent, *i.e.*, to influence electors to give their votes to the person treating them.

My doubt has been whether the treating by the defendant in the course of his canvass, as described by himself, and to which I have referred, does not come within the definition of corrupt treating given by Mr. Justice Blackburn in the *Wallingford case* (1 O’M. & H. 59), that “ whenever a candidate is, either by himself or by his agents, in any way accessory to providing meat, drink or entertainment for the purpose of being elected, with an intention

to produce an effect upon the election, that amounts to corrupt treating. Whenever also the intention is by such means to gain popularity and thereby to affect the election ; or if it be that persons are afraid that, if they do not provide entertainment and drink to secure the strong interest of the publicans, and of the persons who like drink whenever they can get it for nothing, they will become unpopular, and they therefore provide it in order to affect the election ; when there is an intention in the mind either of the candidate or his agent to produce that effect, then I think it is corrupt treating."

I think that the respondent, in doing what he did, was treading upon dangerous ground ; but before holding that his seat is thereby avoided and himself disqualified, I must be satisfied that what he did was done with a corrupt intent, and in judging of this, the general habit of treating in the country, and the respondent's own practice, may properly be considered. In the *Kingston case* (*post*; s.c., 11 Can. L. J. 23), the Chief Justice of Ontario observed : "The general practice which prevails here amongst classes of persons, many of whom are voters, of drinking in a friendly way when they meet, would require strong evidence of a very profuse expenditure of money in drinking to induce a Judge to say that it was corruptly done, so as to make it bribery, or come within the meaning of 'treating' as a corrupt practice at the common law."

In the *Glengurry case* (*ante* p. 8), Hagarty, C. J., has referred to the language of English Judges upon the question as to what, in their judgment, would amount to corrupt treating. I find the case reported in Mr. Brough's very useful little work, "A Guide to the Law of Elections," at page 21. I quote from the passages given in the judgment of the Chief Justice : "In the *Bewdley case* (1 O'M. & H. 19), Blackburn, J., says 'corruptly' means 'with the object and intention of doing that which the Legislature plainly means to forbid.' In the *Hereford case* (*Ibid.* p. 195) the same Judge says that corrupt treating means 'with a motive or intention by means of it to pro-

duce an effect upon the election.' In the *Lichfield case* (p. 25) Willes, J., says treating is forbidden 'whenever it is resorted to for the purpose of pampering people's appetites, and thereby inducing voters either to vote or abstain from voting, otherwise than they would have done if their palates had not been tickled by eating and drinking supplied by candidates.' And again, that the treating must be done 'in order to influence voters' (p. 26). And so in the same reports in the *Tamworth case* (p. 83)."

The Chief Justice also cited the *Coventry case* (*Ibid.* p. 106), and the *Wallingford case* (*Ibid.* p. 57), in which it was said by Blackburn, J., that "the intention of the Legislature, in construing the word 'corruptly,' was to make it a question of intention;" also the *Bradford case* (*Ibid.* p. 37), where Martin, B., as to the meaning of "corruptly," says: "I am satisfied it means a thing done with an evil mind and intention, and unless there be an evil mind or an evil intention accompanying the act, it is not 'corruptly' done. 'Corruptly' means an act done by a man knowing that he is doing what is wrong, and doing it with an evil object. . . . There must be some evil motive in it, and it must be done in order to be elected."

Without subscribing to every word contained in the passages quoted, they contain, no doubt, upon the whole a sound exposition of the law.

The extent of the treating and the quantity of drink given should also be taken into account. It was said by Willes, J., in the *Lichfield case*: "It may be doubted whether treating in the sense of ingratiation by mere hospitality was struck at by the common law;" but he goes on to say in effect that it is now forbidden by the Act of 1854, whenever resorted to with the corrupt intent of influencing voters.

In the treating in question there was the reverse of profusion; there was not more but much less than the usual hospitality practised by the respondent, so that there is really no room for saying that the respondent was actuated by the intention of ingratiating himself with the

electors by profuse hospitality. I will upon this head quote the language of two learned Judges not quoted in the *Glengarry case*. In the *Wallingford case* (1 O'M. & H. 59), Mr. Justice Blackburn considers that the amount of treating is an element of consideration upon the question of intention, and observes, "When we are considering as a matter of fact the evidence to see whether a sign of that intention does exist, we must, as a matter of common sense, see on what scale and to what extent it was done." So Mr. Justice Willes in the *Tamworth case* (Ib. 83), says that it is "obvious that the Legislature did not intend that every bit of bread or sup of drink given to a voter in the course of an election should have the effect of defeating that election." And the same learned Judge in the *Westbury case* (Ib. 50), took occasion to explain what he had said in a previous case, desiring it not to be supposed "that treating by a single glass of beer would not be treating, if it were really given to induce a man to vote or not to vote. All that he had ever said was that there was not sufficient to bring his mind to the conclusion that the intention existed to influence a man's vote by so small a quantity of liquor."

It seems all to come to this, treating is not *per se* a corrupt act; the intent of the act must be judged of by all the circumstances by which it is attended. If in this case the evidence led me to the conclusion that the respondent did what he did in order to make for himself a reputation for good fellowship and hospitality, and thereby to influence electors to vote for him, I should incline to think it a species of bribery which would avoid the election at common law; but, upon a careful consideration of the evidence, it does not lead me to that conclusion. There was nothing wrong, in the eye of the law, in the respondent making his canvass by meeting the electors at taverns, and he does not seem to have abused the occasions of so meeting them by seeking to obtain their votes by pampering their appetites for drink or by other undue means. I apprehend that I must be able to see with reasonable

certainly that he has done this before I can set aside the election.

The case made of an attempt by a Dr. Saur's to bribe one Donald McDonald to vote for the respondent by the giving of a glass of liquor, fails upon the evidence; and the case for avoiding the election by reason of Dr. Saur's treating and partaking of liquor during the hours of polling, fails by the absence of proof that he was an agent of the respondent.

I have not found it necessary to discuss the question of agency in this case, as, in my view of it, nothing turns upon it except in the case of Dr. Saur's, for whose acts I do not find the respondent responsible.

There is not, in my opinion, anything in this case to take it out of the general rule that the costs follow the result of the suit.

(9 *Journal Legis. Assem.*, 1875-6, p. 23.)

EAST NORTHUMBERLAND.

BEFORE MR. JUSTICE GWYNNE.

COBOURG, 20th to 23rd September, and 1st October, 1875.

HENRY S. CASEY, *Petitioner*, v. JAMES MARSHALL FERRIS,
Respondent.

Agency—Delegates to political association to nominate candidates and promote their return—Bribery—Fraudulent device to influence voters.

By the constitution of the Reform Association for the East Riding of Northumberland, each delegate to the convention was actively to promote the election of the candidate appointed by the convention. The respondent had himself been for six years a member of the association, and was familiar with its objects and constitution. He had also as a delegate acted and canvassed for other candidates in the promotion of their elections, and expected the like assistance from the present members of the Association, and to the perfection of that system as an electioneering agency, the respondent owed his election.

Held, that the delegates to the association, acting as such in promoting the election of the respondent, were his agents, for whose acts he was responsible; and that an act of bribery committed by one R., a delegate to such association, and who canvassed and otherwise acted for the respondent, avoided the election.

Shortly before polling day the respondent's agents issued a circular, the substance of which was that they had ascertained upon undoubted authority that W., an independent candidate, despairing of election himself, was procuring his friends to vote for C., the opposition candidate. W. denied the truth of this report.

Held, that this was not a "fraudulent device," within the meaning of sec. 72 of 32 Vic., cap. 21, to interfere with the free exercise of the franchise of voters.

The petition contained the usual charges of corrupt practices.

Mr. D'Alton McCarthy, Q.C., for petitioner.

Mr. J. D. Armour, Q.C., for respondent.

There were three candidates—Ferris, Webb and Cochrane. Mr. Ferris was the nominee of the Reform Association, and was the successful candidate. A night or two before the polling some letters or circulars were sent to different leading men, stating that Mr. Webb, an independent candidate, had despaired of success, and wanted his friends to vote for Mr. Cochrane, the Conservative candidate. Mr. Webb denied the truth of this report.

The main points disposed of at the trial were (1) as to the agency of one Richmond, a delegate to the Reform Association, and an act of bribery said to have been committed by him whereby it was contended the respondent's election would be avoided; and (2) as to the effect of the circular as to Webb's alleged resignation, spoken of above, which it was said was a fraudulent device to influence voters.

GWYNNE, J.—The evidence establishes, beyond all doubt in my mind, that it is part of the constitution and organization of the Reform Association in this Riding (whose candidate the respondent was) that the delegates to the convention, consisting of ten persons from each township and five from each village municipality, should, so long as they might remain in office—that is, until displaced by other delegates—act in promoting the election of the candidate adopted by the convention, in all respects and in the same manner as persons appointed agents by candidates are in the habit of doing for that purpose; that the candidate

looked for, expected and demanded such their assistance and agency to carry his election, and that in consequence thereof, and because of the perfection of the organization as a canvassing and general agency to conduct the election, the candidate chosen by the convention appointed no agent of his own, but used those provided by the organization. The evidence also establishes that the respondent was for six years himself a delegate—that he was well aware of the nature of the organization—that as a delegate he canvassed and acted for other candidates in the promotion of their election, and that he expected and demanded like services from all the delegates, to be rendered to him upon his candidature; and that to the perfection of that system as an electioneering agency the respondent owes his election.

The evidence in like manner establishes that Cyrus Richmond was a delegate—that he was a supporter of the respondent in the convention and voted for his candidature—that, although perhaps not very active at first, he worked for the respondent to promote his election in canvassing for him, arranging for the bringing up of voters, and otherwise as is customary with nominated agents, and that the respondent, as the nominee of the convention, expected and claimed to be entitled to such his support and assistance.

Under these circumstances, I must hold that Mr. Richmond was a person for whose acts the respondent is responsible. It is said that the organization is such, in express terms, that the candidate shall only receive the assistance of the delegates as committee-men on his behalf in all matters that are legal. That is precisely the authority given to all election agents. No man appoints another his agent to do an illegal act; he appoints him only to do legal acts; but if, instead of confining himself to such, he does illegal acts amounting to bribery and such like, the candidate is responsible.

The first question then to be decided is: whether or not Cyrus Richmond did make to Arthur Lyndon the offer of

a bribe, which it is charged that he did make. [The learned Judge, after discussing at length the evidence on this point, decided that an act of bribery had been committed by Richmond, and on that ground declared the election void.]

As to the other point raised, namely, the issuing of the circular on the Saturday night preceding the polling day, there is no doubt in my mind that all the parties to the issuing of that circular were persons who, equally with Richmond, who was himself one of them, must for the same reason be regarded as the respondent's agents, for whom he must be held responsible. I am, however, of opinion that, even assuming the matters stated in the circular to be false to the knowledge of the parties issuing it, it does not come within the 72nd sec. of the Act of 1868, which enacts that "everybody who shall directly or indirectly, by himself or by any other person on his behalf, by any fraudulent device or contrivance impede, prevent or otherwise interfere with the free exercise of the franchise of any voter, shall be deemed to have committed the offence of undue influence." It is, in my judgment, distinguishable from the *Gloucester case* (2 O'M. & H. 60), which is the only case reported having any resemblance to the present. There the act complained of was one which, if it had been designed with the intent imputed, would have been calculated to have the effect of misleading persons, without any exercise of judgment, to place their mark on the ballot paper opposite the respondent's name only, and so have been calculated to make persons, by a trick and deception, vote for a candidate for whom at the time of voting they did not intend to vote. In the case before me, the most that can be said is (assuming the statement in the circular to be false to the knowledge of the parties issuing it), that they were by a falsehood appealing to the electors to exercise their judgment in voting for the friend of the parties issuing the circular.

Now, I do not think that this clause of the statute was intended to cover cases where parties, although it be by

falsehood and slander, appeal to the electors to exercise their judgment how to vote. Election squibs, it is to be regretted, are accustomed to deal freely with the character of opposing candidates; this, although a practice which is immoral in the extreme, and to be condemned by all honest men, has not as yet, in my judgment, been touched by legislation.

(9 *Journal Legis. Assem.*, 1875-6, p. 17.)

LINCOLN.

BEFORE MR. JUSTICE GWYNNE.

ST. CATHARINES, 20th to 22nd May, 8th to 12th July, and 17th September, 1875.

BEFORE THE COURT OF APPEAL.

TORONTO, 15th December, 1875, 22nd January, 1876.

JOHN CHARLES RYKERT, *Petitioner*, v. SYLVESTER NEELON,
Respondent.

Treating in a tavern during polling hours—Penalties on tavern-keeper and purchaser—Bribery by respondent in compensating for an injury to a voter's wife—Implied knowledge by candidate of agent's acts of bribery—Appeal.

One L., an alleged agent of the respondent, went into the tavern of one D. during polling hours on polling day, and purchased spirituous liquor, with which he treated himself and several persons there present.

Held, per Gwynne, J., that the penalties provided by s. 66 of the Election Law of 1868 apply only to the tavern-keeper, who as such is able to control what is done on his own premises in violation of the Act, and that the treating by L. was not a corrupt practice.

Per Draper, C. J. A.—1. That section 66 of the Election Law of 1868 must be construed distributively.

2. That under the first part of the section the tavern-keeper is the only person who can incur the penalty, for not keeping his tavern closed during the prescribed time.
3. That under the second part of the section, the persons who incur the penalty are (1) the tavern-keeper who sells liquor in violation of the statute, and (2) the purchaser who gives the liquor purchased by him to persons in the tavern.

The wife of one S., a voter, had been injured some years before the election by the horses of the respondent, and in 1872 the respondent gave S. compensation for the injury partly by cancelling a debt and partly in cash, for which S. signed a receipt "in full of all accounts and claims whatsoever." The respondent canvassed S. during the election, saying, "I would like to have you with me at the election," but S.

declined, expressing dissatisfaction with the compensation made for the injury to his wife, to which the respondent replied that he was able to do, and could do, what was right. Afterwards the respondent sent his salesman to the wife of S., who told her that the respondent was still able to do justice, to which she replied she would write a letter, which she did, and in which she referred to her husband's vote. After the election the respondent gave S. \$30 partly by cancelling a debt and partly in cash. The respondent denied that he gave S. to understand that he would give him anything to induce him to vote for him at the election.

Held by the Court of Appeal (affirming *Gwynne, J.*), That the evidence showed that an indirect offer of money or other valuable consideration was made by the respondent to S., to induce him to vote for the respondent.

At a late hour on the day preceding the election some agents of the respondent determined to resort to bribery, and they carried out such determination at an early hour on the morning of the polling day. There was no evidence of the respondent's knowledge of, or consent to, this act of his agents.

Held (reversing *Gwynne, J.*), That the shortness of the interval between the resolve and the execution of the bribery, which was carried out at a place several miles away from where the respondent lived, rendered improbable the fact of the respondent's actual knowledge of such bribery.

Per Gwynne, J.—That if an act, made a corrupt practice by statute, is done by an agent of a candidate, but not in pursuit of the object of the agency or the interest of the candidate, or in any way in relation to the election, but solely for the purpose, interest, or gratification of the agent, such act, not being done by such agent *qua* agent, is not within the penalties of s. 3 of 36 Vic., c. 2.

The petition contained the usual charges of corrupt practices, and claimed the seat for the petitioner, the unsuccessful candidate.

Mr. J. A. Miller and the Petitioner in person for petitioner.

Mr. J. G. Currie and Mr. Bethune for respondent.

The facts on which the election was avoided are set out in the judgments in appeal. Evidence was also given that one Patrick Larkin, an alleged agent of the respondent, went into the tavern of one Doyle at Niagara during polling hours on the polling day, and treated several persons there present. Counsel for the petitioner contended that this treating during polling hours was a violation of s. 66 of the Election Law of 1868, and a corrupt practice. The learned Judge held it was not a corrupt practice, and his judgment on that point, not being appealed by the petitioner, is given as follows:

GWYNNE, J. [After stating the facts and quoting the 66th section of the Election Law of 1868, proceeded:]

I confess it does appear to me to be inconceivable that the Legislature could have contemplated the possibility of the section in question being open to the construction that whenever any person, whether a resident in the municipality wherein the election is going on or not, and whether an elector therein or not, sells or gives any quantity of spirituous liquors, whether by wholesale or otherwise, to any person, whether an elector in the municipality or not, and although the transaction, beyond all question, had no relation to, and has no effect upon, the election, the section is violated and the penalty incurred. If then it be, as it appears to me to be, impossible that the section should be construed literally, we must, in order to construe it in the sense intended by the Legislature, endeavor to ascertain with what object, and in order to guard against what evil this section was enacted. And I confess that the difficulties suggested against construing the section as containing two separate and independent offences, appear to me to be so great as to involve the necessity of excluding such a construction, and of reading the section as defining one offence to the committal of which the prescribed penalty is attached.

The prime object of the Act, there can be no doubt, was to secure freedom and purity in elections. The particular section in question is placed under the heading, "keeping the peace and good order at elections." The giving spirituous liquor directly, for the express purpose of obtaining a vote, or after a vote was given, in pursuance of a promise made in order to obtain the vote, is sufficiently guarded against, independently of this section, as an act of bribery. The indirect influence which might be exercised by the providing any species of entertainment or drink, whether previous to or during the election, to any meeting of electors assembled for the purpose of promoting the election at any place except the entertainer's own private residence, where such entertainment is permitted,

and the paying, or promising or engaging to pay, for any such drink or entertainment, was provided against by the prohibition contained in the 61st section.

Still it remained possible, if spirituous liquors could be obtained at the hotels, taverns, and shops where they are ordinarily sold, that much drinking might be indulged in, which the parties partaking of should themselves pay for, and which might injuriously affect the freedom and purity of the election, and from which bloodshedding riots and other breaches of the peace might ensue. Therefore, for greater caution, and with a view to securing that the election should be uninfluenced by any cause arising from the use of spirituous liquors at any of those places during polling day, this section was passed with the intent that "every hotel, tavern and shop, in which spirituous or fermented liquors are ordinarily sold, shall be so closed during the day appointed for polling in the wards or municipalities, that no spirituous or fermented liquors shall be sold or given to any person within the limits of such municipality under a penalty of \$100 in every such case." That is to say, in every case in which any such hotel, tavern, or shop-keeper shall, in violation of this section, sell or give such spirituous liquors or drinks, or permit such to be sold or given upon his premises.

But assuming this to be the true construction, still the treating, which is assailed as in violation of the 66th section of the Act of 1868, occurred at a hotel. Doyle, the hotel-keeper, within the polling hours sold the drinks, of which McClelland, Lavelle, and Todd partook. Doyle is undoubtedly guilty of a violation of the section, and upon prosecution liable to its penalty. It may be also admitted that the act of selling by Doyle, as in violation of the section, is, under the provisions of the 1st section of 36 Vic., cap. 2, a statutory corrupt act committed by Doyle, although the act was never contemplated by any one to have, and although it had not in fact, any effect whatever upon the election, and that moreover by this act of sale, Doyle, upon his being proceeded against and found guilty

under the provisions of the 49th section of the Act of 1871, will be rendered incapable for a period of eight years of being elected to and of sitting in the Legislative Assembly, and of being registered as a voter, and of voting at any election, and of holding any office at the nomination of the Crown, or of the Lieutenant-Governor, in Ontario, or any municipal office. Still two questions remain : Firstly, is Larkin also guilty of a violation of the same 66th section within the meaning of that section ? And secondly, assuming him to be, and that he was an agent of the respondent, is the latter's election thereby avoided ? The answer to the first of these questions depends upon the construction to be put upon the 66th section referred to, and to the latter upon the construction to be put upon the 3rd section of the Act of 1873. The 66th section undoubtedly says that no spirituous or fermented liquors or drinks shall be sold or given.

Now in the case in question, certainly in one sense, Larkin, as the person treating McClelland, Lavelle, and Todd, may be said to be the giver to them of the drinks which Doyle sold and for which Larkin paid, but it is contended that the section is pointed against the hotel, tavern, or shop-keeper, and that it is upon him that the penalty is imposed, and that where a tavern-keeper sells a glass of liquor to A. for the purpose of treating B., who thereupon drinks it while A. pays for it, there is but one act done in violation of the statute, but one offence committed, which is committed by the tavern-keeper, and that two penalties cannot be recovered, the one against the seller and the other against the treater, for one and the same glass of liquor sold. The glass of spirits, for example, which Lavelle drank, was sold only for the purpose of being drunk by him, although Larkin paid for it. For the sale of that glass Doyle is guilty of a violation of the section, and for that glass, for the sale of which Doyle is responsible and liable to be disfranchised for eight years, it is contended that Larkin cannot also be made responsible and be subjected to the like penal consequences as

given within the meaning of the Act, merely because he pays the price instead of Lavelle. So if a shopkeeper licensed to sell liquors sells a dozen of wine to A., who buys it for the purpose of being sent, and orders the vendor to send it, to B., a poor friend of A.'s unable to pay for it himself, although this being done within polling hours may make the shopkeeper liable for selling in violation of the statute, it is contended that A., who bought it only that it might be sent to B., to whom the shopkeeper did send it, is not also liable to another penalty as giver. This is a point which would more satisfactorily be raised upon a prosecution for the penalty under the statute. I confess there seems to be great force in the argument. If the true view be, as it seems to me to be, that the act was intended alone to point against hotel, tavern, and shop-keepers, upon whose premises spirituous liquors and drinks are ordinarily sold, and who have it in their power to control what is done there, then the words "sold or given" must be limited to the hotel, tavern, or shop-keeper, and must mean sold or given by him; the word "given" being added to prevent the possibility of the party proceeded against for the penalty evading the statute by setting up as a defence that he did not sell, but himself gave the drinks.

That this is the true construction seems to me to be apparent, when we trace the source from which the 66th section is derived. It and the preceding sections, numbering from 57, are taken from sections 72 to 81 inclusive, which are grouped under precisely the same heading as clauses relating to the "keeping of the peace and good order at elections," in the Con. Stats. of Canada, 22 Vic., cap. 6; the 81st sec. of which Act, corresponding with the 66th section of the Act of 1868, enacted that "every hotel, tavern and shop in which spirituous or fermented liquors or drinks are ordinarily sold shall be closed during the two days appointed for polling in the wards or municipalities in which the polls are held, in the same manner as it should be on Sunday during divine service; and no spirituous or fermented liquors or drinks shall be sold or

given during the said period under a penalty of \$100 against the keeper thereof if he neglects to close it, and under a like penalty if he sells or gives any spirituous or fermented liquors or drinks as aforesaid."

What was meant by the words in this section, "in the same manner as it should be on Sunday during divine service," is not very clear, for there was no law that I can find then in force in Canada prescribing the duty of hotel and tavern-keepers to keep their houses closed in any particular manner during divine service on Sunday. [The learned Judge referred to various statutes on this subject, viz., Con. Stats. L. C., c. 6, s. 27; *Ibid.* c. 22, s. 5; Con. Stats. U. C., c. 54, s. 264; Imp. Stats. 3 George IV., c. 77; 9 George IV., c. 61; 11 and 12 Victoria, c. 49; and proceeded:] But none of those statutes which have reference to the period of "divine service on Sunday" had ever any force in Upper Canada, and it was drinking spirituous liquors at the places which constituted the offence, during the hours of divine service on Sunday. It is difficult, therefore, to understand what the Legislature of Canada meant by the 81st sec. of 22nd Vic., cap 6, which in plain terms enacted two penalties against the innkeeper—the one for neglecting to "close his hotel or tavern in the same manner as it should be on Sunday during the hours of divine service," and the other "if he should sell or give any spirituous or fermented liquors as aforesaid."

How the offence of neglecting to keep the hotel or tavern "closed in the same manner as it should be on Sunday during the hours of divine service," could be committed in the absence of the sale or gift of any spirituous or fermented liquors or drinks, and in the absence of all drinking suffered or permitted at the hotel or tavern, I fail to be able to see, and it seems to me that it was most probably this difficulty which induced the draughtsman of the Election Law of 1868 to strike out these ineffectual words, and so to amend the section as to do away with the double penalties, and to enact a single offence with a

single penalty, which in my opinion is what is done by the 66th section, which offence consists in the selling or giving spirituous or fermented liquors or drinks at any hotel, tavern, or shop in which spirituous or fermented liquors or drinks are ordinarily sold. The word drinks, used in the Act of 1868, and in 22 Vic., cap. 6, seems to me very plainly to indicate that what the Legislature desired to guard against was that general habit of "drinking spirituous liquors" so common at elections, and which was so well calculated to tend to breaches of the peace and violation of good order at elections, which it was the object of that section of the Act, from which this 66th section was taken, to maintain. But it is further to be observed that in all the above statutes in which I find any reference to the words "during the hours of divine service," and especially in the 22nd Vic., cap. 6, it was the proprietor of the hotel, tavern, or shop where the spirituous or fermented liquors or drinks are ordinarily sold, and who as such is able to control what is done on his own premises, that is made guilty of the offence, and upon whom the penalty for any violation of the statutes is imposed.

In my judgment, the 66th section of the Act of 1868 was not intended to have, and has not, any different effect in this respect, and such person is, in my opinion, the only person who can be pronounced to be guilty of a violation of the statute, and liable to the penalties which it imposes, and consequently he is the only person who, in the terms of section 1 of the Act of 1873, can be said to be guilty of the corrupt practice which that statute declares a violation of the 66th section of the Act of 1868, within polling hours, to be.

It was the retailing of drink, and drinking in such a manner as was calculated to affect the purity and freedom of election, which was the evil intended to be guarded against; and the Legislature, in my opinion, have deemed that object sufficiently attained by making the proprietor of the hotel, tavern, or shop where the spirituous liquors

are ordinarily sold, answerable for what he permits to be done in violation of the Act.

But assuming in the cases put of the treat at the hotel, and the purchase of the dozen of wine at a shop, that not only the seller is liable, but also the person who pays the price, and assuming the latter to be an agent for promoting the election of a candidate, will the candidate, if elected, forfeit his seat by reason of such act within the meaning of the 3rd section of the Act of 1873, the first sub-section of which enacts that "when it is found upon the report of a Judge upon an election petition, that any corrupt practice has been committed by any candidate at an election, or by his agent, whether with or without the actual knowledge and consent of such candidate, his election, if he has been elected, shall be void." If a person who is a candidate choose to appoint as his agent a hotel or tavern-keeper who has an independent interest of his own in violating the statute, and whose violation of it may, as it certainly might, lead to violence endangering the freedom of the election, it would be plainly proper that a candidate who appoints such a person as his agent should have his election avoided, if his agent should so conduct himself in plain contravention of the statute, and we should not stop to inquire whether the violation of the statute did or did not in fact affect the election. It is sufficient that it was well calculated to do so. And it was because it was well calculated to do so that the section prohibiting such practices, and that pronouncing them to be corrupt, were passed. But it seems to be quite another thing where an agent, not himself a tavern-keeper, and being in need of refreshment, goes to a tavern, and for that purpose buys there a glass of beer, wine, or other liquor for himself, and at the same time treats a friend or two to a glass as he would on any other occasion, such treat having no reference whatever to the election, and, it may be, being given to a person not an elector—in such case, although the tavern-keeper who sells the liquor would undoubtedly be guilty of a violation of the 66th

section of the Act of 1868, and so of the statutory corrupt practice declared by the Act of 1873, and even though the agent may also be in like manner guilty, shall the innocent principal in such case have his election avoided by such treat?

The Legislature, no doubt, may arbitrarily enact that any act, even one in which the candidate is in no way concerned, and which is not done in his actual or supposed interest or in pursuit of the object of the election, may notwithstanding avoid the election, but in the absence of the most express words conveying such an intent, we should avoid a construction having such effect.

What the Legislature has said upon the subject is contained now in the 3rd section of the Act of 1873, which contains two sub-sections that must be read together, and so as to be consistent with each other. The object and effect of that section was plainly, as it appears to me, to repeal wholly the 69th section of the Act of 1868, which had been in effect, though not in terms, repealed by the 46th section of the Act of 1871, and to substitute a clause in lieu of the 46th section. That 46th section of the Act of 1871 had enacted that, where it is found by the report of the Judge upon an election petition under the Act that any corrupt practice has been committed by or with the knowledge and consent of any candidate at any election, his election, if he has been elected, shall be void, and he shall during the eight years next, after the date of his being so found guilty, be "incapable of being elected to, and of sitting in the Legislative Assembly, and of being registered as a voter and voting at any election, and of holding any office at the nomination of the Crown, or of the Lieutenant-Governor, in Ontario, or any municipal office."

It might perhaps have been held under this section, prior to the passing of the Act of 1873, that a corrupt practice committed by any person should avoid a candidate's election and subject him to disqualification for eight, years, if committed with his knowledge and con-

sent, for the only practices which were corrupt within the provisions of the Act of 1868, or the common law of Parliament, were such as were directly or indirectly done by the candidate himself, or by some person in his behalf, with a view to the promotion of his election ; but whether or not there could have been any corrupt practice committed by any one, other than the candidate himself or his agent, to which this 46th section of the Act of 1871 could be applied, it is unnecessary to inquire, for that section is repealed by the 3rd section of the Act of 1873, the 1st sub-section of which very distinctly, to my mind, expresses and declares all the cases in which an election shall be avoided, namely, in the cases only of corrupt practices committed by the candidate himself or by his agent at the election, while the 2nd sub-section declares that in addition to the avoidance so declared by the first sub-section, disqualification shall also ensue when the corrupt act which so avoids the election is done by or with the knowledge and consent of the candidate, that is, where it is done by himself personally or by his agent, with his knowledge and consent, for unless done by himself or his agents, the election is not avoided at all. The second sub-section carefully abstains from saying that any corrupt practice committed by or with the actual knowledge and consent of any candidate shall avoid the election, as the 46th section of the Act of 1871 had done ; it simply annexes to the avoidance of the election, which the first sub-section regulates and declares, disqualification if the act avoiding the election (which can only be the act of the candidate or his agent) be done with his knowledge and consent ; the whole section taken together enacting that any corrupt practice committed by a candidate at an election, or by his agent, shall avoid the election, whether done with or without his knowledge, which words can only refer to the acts of the agent, but if done by himself personally, “ or with his knowledge or consent ” (which words must also be held here to refer to the act of the agent, to be consistent throughout, for no other act

but that of the candidate or his agent avoids the election), disqualification also shall ensue in addition to the avoidance.

Now the avoidance of a candidate's election being confined to the acts of himself or his agents, what are the acts of an agent within the meaning of these words in the section, "committed by any candidate at an election, or by his agent?" The first section of the Act of 1873 adds to the category of corrupt practices the violation of the 66th section of the Act of 1868. This violation can, in my judgment, be committed only, as I have said, by the keeper of the hotel, tavern, or shop where spirituous liquors or drinks are ordinarily sold, but such violation of the section may be committed by a person who is an agent of the candidate, in such a manner as to have no reference whatever to the promotion of the purpose for which the agency was created—in such a manner as in no possible way to be capable of having any effect whatever on the election; as, for example, where a candidate and a friend find it absolutely necessary to take the refreshment of dinner at an hotel, and at the dinner partake of their usual reasonable quantity of beer or wine—it may be one or two glasses, supplied by the hotel-keeper as part of the dinner—can it be that the Legislature contemplated not only avoiding a candidate's election, but also of disqualifying him for eight years, because (admitting, for the sake of argument, the hotel-keeper, within the rigid terms of the 66th section, to have been guilty of its violation) the candidate partook of the refreshments so supplied, or paid for what was supplied to his friend, and was, so far as such act could make him, a consenting party to the violation of the Act by the hotel-keeper. The 66th section does not say that any person consenting to a hotel-keeper or other person violating the 66th section, shall himself be guilty of a violation of it. I must say that, to my mind, it would be contrary to the plainest principles of common sense and justice, to attribute such an intent to the Legislature, or to put such a construction upon the Act. Such a construction would have the effect,

in my judgment, of enacting laws of the most penal character by judicial decision—not by legislative declaration clearly expressed, without which latter sanction, plainly expressed, no penal consequences of any description—much less of the character of those penalties here referred to—can be imposed. Every Act of Parliament should be so construed as to be consistent with common sense and justice, and not so as to do violence to common sense and to work injustice.

The sensible construction then of the 3rd section of the Act of 1873, which declares the election to be avoided by the corrupt act of the candidate's agent, seems to me to be to confine its operation to such acts as are done by the agent—I do not say within the scope of, but in the course of or exercise of the agency, and in the pursuit of the object of the agency—acts done as specified in the 67th section of the Act of 1868, directly or indirectly by the candidate himself—some act done with a view to promoting in some way the objects of the principal, and not to extend to acts in which the principal is in no way concerned, and which are done not with any view to his interests, or to the object of the agency. Such acts are, it is true, the acts of the person who is agent, but they are not the acts of the agent *qua* agent. In some cases a question may sometimes arise whether or not the act of the agent, which is relied upon as avoiding the election, was done by him *qua* agent, that is to say, in the pursuit of the object of the agency, and with a view to the interests of the principal; in such cases justice will be done, and the purity of election secured by determining the point in doubt in favor of avoidance, but if, beyond all question, the act complained of is not done in pursuit of the object of the agency, in view of the interest, actual or supposed, of the candidate, or in any way in relation to the election, but solely for the purpose, interest, or gratification of the person who is agent, and is not corrupt otherwise than as it is prohibited and made so by the statute, such an act, not being done by the agent *qua*

agent, is not an act which can, in my opinion, be within the meaning of the 3rd section of the Act of 1873.

I am of opinion, therefore, for all of the above reasons, that the respondent's election cannot be avoided for the treat referred to as given by Larkin at Doyle's hotel, although Doyle undoubtedly was guilty of a violation of the 66th section of the Act of 1868, and thereby of a corrupt practice within the meaning of the 1st section of the Act of 1873, and is liable to be made amenable, under that section, to all consequences of having committed a corrupt practice.

The learned Judge having, on the other evidence in the case, found that the respondent personally, and by his agents, with his knowledge and consent, was guilty of corrupt practices, the respondent appealed to the Court of Appeal.

Mr. Robinson, Q.C., and Mr. Bethune for the appellant (the respondent to the petition).

Mr. J. A. Miller for the respondent (the petitioner).

DRAPER, C. J. A.—The only reason given for the appeal in this case is as follows: "That there was not sufficient evidence of corrupt practices having been committed by any agents of respondent, or by the respondent himself, or by and with his actual knowledge and consent, to warrant a judgment voiding the election herein." The judgment was that the respondent was not duly elected—that the election was void "by reason of corrupt practices committed by himself personally, and by reason of other corrupt practices committed by his agents with his knowledge and consent."

In the outset, I must say (speaking for myself only) that I entirely concur in the introductory observations to the judgment delivered, to the effect following: "The difficulty which I have experienced in evolving truth from the greater part of this mass of evidence has been great beyond what can well be conceived, arising from the fact

that the manner in which many of the witnesses gave their evidence—who from their intimate connection with the respondent in his business relations, and in the connection with the canvass on his behalf, should reasonably be expected to be able to place matters in a clear light—has left an impression on my mind that their whole object was to suppress the truth.”

Apart from the weight to which the opinion of the learned Judge is entitled, he having heard the whole evidence, and having had the fullest opportunity to notice the demeanor of each witness, his manner of giving evidence, whether serious and considered or otherwise; and having myself repeatedly gone over it to compare the statements of the witnesses, I feel it my duty to say that I recognize the justice of the censure thus passed upon no inconsiderable portion of the testimony; and severe as the comment undoubtedly is which the learned Judge felt himself called upon to make in regard to the evidence of Mr. John W. King, I see much reason for thinking that it was not uncalled for. One illustration of the want of correspondence between their verbal resolves and their actions may be given. On the afternoon or evening of Saturday the 16th January (the poll was to take place on Monday following), as one witness stated, “We spoke about spending money, but it was resolved not to. It was the subject of general conversation. Spending money was talked of the same as any other election matter, but there was no way of spending it, the law was so strict.” On the Sunday evening (Mr. James S. Norris is the witness) some parties met at Mr. John W. King’s house, at St. Catharines, Mr. King being the book-keeper and confidential clerk of the respondent. Mr. Norris says: “There was a discussion that evening which would lead to the requirement of money. They spoke, I think, of money being used against them. The party said so. . . . The impression among us was that money was being used against us, and we spoke of using money to counteract it. We decided not to use any money.” That same evening,

at a late hour, Robert McMaugh and Hugh Hagan left St. Catharines. They drove to Clement's, the postmaster, and with him went to several houses. The evidence as to the acts of some one or other of them is quite sufficient as against them to sustain the charge of bribing voters. Whether the evidence, on a consideration of the whole case, will bring the respondent within the scope of subsec. 2, sec. 3, of 36 Vic., c. 2, on the ground of corrupt practice committed by and with his actual knowledge and consent, is a question which will be more conveniently disposed of after other cases have been stated and remarked upon.

The case of treating during polling hours in a tavern in the town of Niagara, by giving spirituous liquors which were drank in the tavern, calls for an interpretation of the 66th sec. of the Act of Ontario, 32 Vic., cap. 21.

The section is placed in a division of the statute headed "keeping the peace and good order at elections," and is thus worded: "Every hotel, tavern and shop in which spirituous or fermented liquors or drinks are ordinarily sold, shall be closed during the day appointed for polling in the wards and municipalities in which the polls are held; and no spirituous or fermented liquors or drinks shall be sold or given to any person within the limits of such municipality during the said period, under a penalty of \$100 in every such case."

The law previously in force in the Province of Canada on the same subject was: "Every hotel, tavern and shop in which spirituous liquors are ordinarily sold, shall be closed during the two days appointed for polling in the wards or municipalities in which the polls are held, in the same manner as it should be on Sunday during divine service, and no spirituous or fermented liquors or drinks shall be sold or given during the said period, under a penalty of \$100 against the keeper thereof if he neglects to close it, and under a like penalty if he sells or gives any spirituous or fermented liquors as aforesaid."

It is, as I understand, contended that the change of language in the latter Act, omitting the special limitation of the penalty to "the keeper thereof," makes no difference in the construction, and that the offence which subjects to the penalty can only be committed by the hotel, tavern, or shop keeper, under the present statute, which I shall not contend would not be the true construction of the statute of Canada.

It is also, as I learn, further contended that section 66 creates only *one* offence, consisting of two parts, viz.: (1) not keeping the tavern, &c., closed; (2) selling or giving spirituous or fermented liquors to any person. If the latter proposition be correct, it may be that no one but the keeper can incur the penalty; but, confining attention strictly to the language of the section, I think the proposition untenable.

I will first endeavor to meet a suggestion that, unless the section is read as indivisible, the non-observance of the first part will incur no penalty. This appears to me to make the question depend upon punctuation. Put a full stop after the word "closed," and it may be so; but read the whole together, without pause, or even with a comma after "closed," and give legitimate effect to the closing words, "under a penalty of \$100 *in every such case*," and the objection disappears. In every case in which the preceding enactments are violated a penalty is inflicted, as well when the house is not kept closed as when a glass of wine, or of spirits, or of beer is sold or given.

There is a further reason for construing this section distributively, though the amount of the penalty is the same in all cases. The authority of *Crepps v. Durden*, Cowp. 640, has never been questioned; it has been frequently recognized, and was the unanimous judgment of the Court of King's Bench, delivered by Lord Mansfield. The point decided was that where a statute imposed a penalty upon a man for exercising his ordinary calling on the Lord's day, he could commit but one offence on the *same* day. As regards the form, it can make no dif-

ference that our statute is mandatory, ordering that the house, &c., be kept closed, while in the English Act it is prohibitory—"No tradesman or other person shall do or exercise any wordly labor, business or work of their ordinary calling on the Lord's day." In Lord Mansfield's language, "The offence is exercising his ordinary calling on the Lord's day, and that, without any fraction of a day, hours or minutes, it is one entire offence, whether longer or shorter in point of duration, and so whether it consist of one or a number of particular acts." In that case the act complained of was exercising his ordinary calling by selling hot rolls of bread. That was the mode in which the ordinary calling was exercised. The selling hot rolls was not prohibited, the exercise of the ordinary calling was. In our case the Legislature have not stopped short at commanding that the tavern should be kept closed, they have also prohibited two other distinct matters—selling and giving liquor, &c. The first is of a character which falls directly within the principle of *Crepps v. Durden*—only one such offence can be committed on the same day; the second, forbidding acts which may be repeated again and again with or to different individuals all day long—and they have imposed the penalty *in every such case*.

It appears to me to follow that the keeper of the hotel, tavern or shop is the only person who can incur a penalty for not keeping the same closed during the day appointed for polling.

The violation of this 66th section is made a corrupt practice by 36 Vic., cap. 2, s. 1, provided such violation occurs "during the hours appointed for polling." The reason for a difference between the 66th section and the 1st section of 36 Vic., cap. 2, is not very obvious; but for some cause penalties are imposed by the one for any violation of its provisions during the *day* appointed for polling; but to constitute the same violations corrupt practices, they must take place "during the *hours* appointed for polling." With that exception, the offences remain

as defined in the 66th section, and for the purpose of imposing the penalty there is no change. The Legislature, however, appear to have taken a more serious view of these offences than they did when the Act of 1868 was passed. There may have been a necessity for some greater punishment than a mere pecuniary penalty to check the undiminished practice of having taverns open on polling days, or of selling liquor or treating on those days, and hence the additional provision in the 36th Victoria.

But for the word "*give*" I might have thought the whole section 66 was confined to the keepers of hotels, taverns and shops. But looking at the object, viz., "keeping the peace and good order at elections," and the prohibition to *give* as well as to *sell*, I think that would be too narrow a construction; and I am of opinion that any person who during the day appointed for polling shall give any spirituous or fermented liquor or drink to any other person within a hotel, tavern or shop in which such liquors or drinks are ordinarily sold, in the wards or municipalities in which the polls are held, is as guilty of a violation of the section in question as the keeper of such establishment would be who himself should give the liquor. If it was intended to limit sec. 66 to the hotel-keepers, &c., by the provision that no spirituous or fermented liquors or drinks shall be sold or given, it would have been much simpler to have said within his hotel, etc., instead of within the limits of such municipality, and simpler still to have said, and no keeper, etc., of any such hotel shall sell or give, etc.

The peculiar form of expression tends to show that the Legislature intended to prescribe one thing, *i.e.*, keeping the hotel, etc., closed; and to forbid another, *i.e.*, selling or giving liquor, and to impose a penalty on every person who neglected to obey the one, or who acted in defiance of the other.

As the tavern-keeper, etc., who sells in violation of the statute commits an offence, so the purchaser is equally

guilty with the former if he gives the liquor purchased by him to persons in the tavern.

That Larkin was an active agent of respondent is sufficiently proved, and in my view of the law he was guilty of a corrupt practice in treating at Doyle's. The learned Judge, after a very elaborate consideration of the statute and of other authorities which he has referred to in relation to the question, held that the election could not be avoided for this treat, and the petitioner has not appealed against that decision.

The case of W. H. Stewart (the colored man) remains to be considered. Upwards of two years before the election a pair of respondent's horses ran over Stewart's wife, and one of her legs was broken. She was laid up for eight months in consequence. At that time Stewart was indebted to the respondent, and the debt was written off in the respondent's mill book. Mr. J. W. King gave this account of the matter: "Mr. Stewart had no legal claim. It was an act of charity to pay him what we did. It is two years since we paid him, whatever it was. It was given as a little present on account of the affliction." And on the 23rd November, 1872, Stewart signed a receipt in presence of J. W. King as follows: "Received from S. Neelon the sum of fifty-four dollars and sixty-six cents, in full of all accounts or claims whatsoever." About a week before the election now under consideration, the respondent, having apparently heard that Stewart or his wife were dissatisfied, sent his salesman, Sisterson, to see her. She told him she was not satisfied—she did not think respondent had done her justice. After the election she came and saw the respondent, and he told her he would give her \$30, and asked if that would satisfy her. Credit was then given for \$19.12 on an account against Stewart, and \$18.88 was paid to her in cash, by respondent's direction. But before this payment, and also about a week before this election, Stewart and the respondent met at the municipal election at the Grantham school-house, and according to Stewart's account, respondent said to him,

"I would like to have you with me at the election." Stewart replied he could not very well be with him because he, respondent, did not give what Stewart thought were the damages due to his wife. That he told respondent he had not done him justice, and that respondent said if he had not done what was right, he was able to make it right. Respondent did not say anything about his (Stewart's) vote, but he told more than one time that he would like to have Stewart with him. Daniel Stanley was sitting with Stewart at the time, and says respondent asked Stewart if he was going to do anything for him ; that Stewart said, "No, sir, I cannot." Respondent asked, "Why?" Stewart said, "You did not do the fair thing when my wife's leg was broken." This is Stanley's account, and he goes on: Mr. Neelon said, "If you will see me in this cause or case, if I have not done the fair thing, I will do the fair thing." Stanley says he heard the conversation distinctly—he could not help hearing it particularly, and did not think there was anything wrong in what was said at the time, and did not think from the language that Mr. Neelon was trying to buy the man's vote. And Robertson, who was standing near, heard respondent say, "Mr. Stewart, I am willing to do it, and will do it." Stewart says respondent began the conversation by saying, "I would like to have you with me at the election." Then Stewart expressed his dissatisfaction as to the compensation made for the injury to his wife, and respondent said if he had not made it right, he was able to make it right. And he wound up his evidence by saying, "Mr. Neelon said to me, 'Mr. Stewart, I want to do what is right. I am able to do what is right. I can do what is right.' It was not said by way of a bargain. Mr. Neelon only told me he wanted me to support him ; he did not make the payment depending on my voting for him." Stewart told his wife what had passed, and she wrote a letter to respondent, beginning, "You sent me word by my husband *about voting, and what I had to say, and if you do what is right, he can use his own pleasure*

about it. . . . And now you can use your own pleasure about it, but I think you will do what is right. If you do, give me \$100, and I don't think that will be anything out of the way." This letter is dated January, 1875, no day stated. Stewart says he went to the mill about dusk with the letter, and gave it to a man who attends at the mill. He saw King and Sisterson afterwards, and not hearing anything about the letter, he asked Mr. King if he had seen the letter, and he said he had read it, hung it up, and put it on file. He afterwards asked Mr. King, and he said respondent had read the letter and placed it on file. Then afterwards he saw respondent, who gave him \$30—not all in cash. He deducted a bill Stewart owed at the mill, and gave the balance in money. Sisterson says that about a week before the election, respondent sent him to see Mrs. Stewart. He told her respondent was still able to do justice—he did not say respondent *would* do justice; he was not authorized to say anything of the kind. Mrs. Stewart told him she would write a letter. It was at her own dictation that she wrote the letter stating what her claim was, and Sisterson said, "That will be just as well."

In reference to this the respondent swears: "I gave him (Stewart) to understand I would not give him a cent to go with me in the election. I used no such language as 'If I had not done the fair thing, I will do it if you will be with me,' or anything in substance the same; nor did I say, 'If I had not made it right, I would make it right.' After the election was over, Stewart came to the mill and asked if I had received a letter he had left there. I said no. He went out and made inquiry of King or Sisterson, and they came in with the letter, which was found in a pigeon hole in my desk. I opened the letter and read it."

Looking at the whole of this evidence, I cannot resist the conclusion that the respondent errs in his representation—he does not say so in express words—that he knew nothing of this letter until after the election. He had

heard of Mrs. Stewart's dissatisfaction, and before the election he sent Sisterson to her; she told him she would write, and his statement clearly indicates he was present when she dictated the letter; his remark, "that will be just as well," clearly indicates that he knew of its contents, makes it at least highly probable that she had expressed her views to him, which, but for the letter, he would have communicated to respondent. Sent for the express purpose of asking Mrs. Stewart "what was the matter with her," Sisterson must, on his return, have given some account to respondent, and if he said what, if his present account be true, he must have said, that she was going to send a letter, it makes it unlikely that the letter, when it arrived, should have been put away in a pigeon hole unopened. King says, in reference to letters for respondent arriving when he was not at the mill, "If he was not at home I opened them. . . . He was not absent, only for meetings, and his letters always remained *on his desk*." Stewart swears that King told him that he had read this letter and put it on file, and afterwards told him that respondent had read it and put it on file. If King read it, and it seems to have come to his hands upon or soon after its arrival at the mill, I cannot assume that he put it in respondent's desk without mentioning it. On the whole, I deduce as a fact that respondent became aware of it before the election, and thought it as well to leave Stewart to vote without further interference, being satisfied Mrs. Stewart would not influence him adversely.

But in any event the letter shows what impression the conversation with respondent produced at the time on Stewart, and I attach more value to that than to his subsequent assertion, which literally was no doubt true, that respondent did not make the payment depend on his voting for him. Stewart went to his wife, apparently immediately after parting with respondent, and tells her about it, and she writes, or rather dictates, a letter to respondent, beginning, "You sent me word by my husband *about voting*, and what I had to say, and if you do

what is right, he can use his own pleasure about it." I cannot doubt that, whatever were the precise words used by respondent, the conversation between him and Stewart related to the election and to Stewart's vote, and that Stewart's statement that respondent said to him, "I would like to have you with me at the election," is the key-note to all that followed. Stewart understood it, though his vote was not directly mentioned, and the respondent expected it would be so interpreted though so guardedly veiled; and the subsequent settlement and payment confirm me in this conclusion.

I feel therefore constrained to hold this to have been an indirect offer, originating with the respondent, of money or valuable consideration, made to Stewart to induce him to vote for respondent at the coming election, and I therefore agree in the judgment that the election is void by reason of this corrupt practice committed by the respondent himself, as well as by reason of other corrupt practices committed by James S. Clement, Robert McMaugh, Hugh Hagan, and others his agents.

Before concluding, I desire to make an observation as to the proceedings and bribery which are proved to have occurred on the Sunday night before, or in the early morning of the day of the polling.

The professions of a candidate that he is entirely ignorant of the conduct and acts of his most zealous supporters, especially in reference to such acts as are rarely adopted except as a last resort, must unavoidably be regarded with suspicion, and cannot be accepted without scrutiny. And this the more if among these supporters are found some who for years have been and still are in his service, employed and trusted by him in business relations, some of them confidential, and of frequent, perhaps daily occurrence—the candidate, to insure immunity, to all appearance keeping aloof from the consultations of his friends, avoiding any apparent participation in their acts, and thus remaining ignorant of everything which might not become known to the most ordinary observer—ignorant, in

fact, because he will not use the means of information which surround him.

Such ignorance brings to mind the old maxim, *Ignorantia juris quod quisque tenetur scire neminem excusat*, and makes Mr. Best's comment on the maxim more pertinent: "If those only should be amenable to the laws who could be proved acquainted with them . . . persons would naturally avoid acquiring a knowledge which carried such dangerous consequences with it."

And so the wilful avoidance of a knowledge also fraught with danger might, without much strain, be deemed evidence of approval or even of consent.

But in this case I do not find any proof of a determination to resort to bribery until a late hour on Sunday evening, and it was immediately acted upon and carried out by an early hour on Monday morning. As a fact, I cannot find proof of the respondent's knowledge or consent. The evidence of agency I think ample, so also of bribery by those agents, and this avoids the election. The shortness of the interval between the resolve and the execution renders improbable the fact of the respondent's actual knowledge, and a finding against him ought to be free from reasonable doubt.

BURTON, J. A.—I concur in thinking that this appeal must be dismissed, but I desire to base my decision entirely upon the Stewart case.

I agree with the learned Chief Justice, that there is no evidence to connect the respondent with what is spoken of as the Sunday raid. That transaction was conceived and carried out only a few hours before the polling day, and there is not a scintilla of evidence to show that the respondent had knowledge of it, nor, in my opinion, that there was any arrangement to which he was a party, that he should be kept in ignorance of the particular acts of corruption, whilst having a general knowledge that such means were being employed; and—adopting the language of the late Mr. Justice Willes—no amount of evidence

ought to induce a judicial tribunal to act upon mere suspicion, or to imagine the existence of evidence which might have been given, but which the petitioner has not thought proper to bring forward, and to act upon that evidence, and not upon that which really has been brought forward; and that when circumstantial evidence is relied on, the circumstances to establish the affirmative of a proposition must be all consistent with the affirmative, and that there must be one or more circumstances believed by the tribunal, if you are dealing with a criminal case, inconsistent with any reasonable theory of innocence. There is nothing in the whole of the evidence which is not consistent with the respondent's innocence.

As regards the Stewart case, there was evidence which might impress different minds differently.

In dealing with the finding of the learned Judge upon that evidence, we are much in the position of Judges when a rule is moved for to set aside the verdict of a jury on the ground that the verdict is against evidence. The Judges do not consider what conclusion they would have arrived at had they been placed in the position of the jury, but whether there is sufficient evidence to warrant the verdict, and whether the presiding Judge is satisfied with it. Here the learned Judge has found upon the evidence adversely to the respondent, and I should not presume on a question of fact to set up my opinion against his, when he had the advantage of hearing the witnesses, apart from the deference which I feel to be due to a Judge of his learning and experience.

PATTERSON, J. A.—This is an appeal from the decision of Mr. Justice Gwynne, which sets aside the election and disqualifies the candidate for corrupt practices committed by him.

The evidence on one of the charges, viz., that of bribing a colored man named Stewart, is quite sufficient to sustain the finding, and I see no reason for taking a different view of it from that taken by the learned Judge.

The facts stated in evidence were, that Stewart's wife had her leg broken about two years before the election by Mr. Neelon's team, which had run away, and Mr. Neelon had paid her or her husband \$55 as compensation, partly by cancelling an account and partly by cash. It does not appear that after that settlement the Stewarts had had any open account with Mr. Neelon, or had been obtaining goods on credit, until January, 1875. The Stewarts were dissatisfied with the settlement, but nothing was done to remove their dissatisfaction until the approach of the election now in question. This election was on the 18th January, 1875. When the municipal election for the township of Grantham was being held, in the beginning of the same month, Mr. Neelon spoke to Stewart in a school-house where a number of people were, and asked for his support, which Stewart declined to promise, saying that Mr. Neelon had not done the fair thing when his wife's leg was broken, and Mr. Neelon gave him to understand that he was willing to "do the fair thing." Mr. Neelon himself denies that he made any promise to Stewart, although he says that Stewart had put forward his grievance as a reason for not supporting him, both on the occasion in the school-house and on another occasion shortly before that, when Mr. Neelon had been canvassing him for his vote. After going home from the school-house, Stewart appears to have told his wife of the conversation with Mr. Neelon, and some little time afterwards she wrote, or dictated to her daughter, a letter to Mr. Neelon, commencing thus: "Mr. Neelon, you sent me word by my husband about voting, and what I had to say, and if you do what is right, he can use his pleasure about it," and ending by asking \$100 more. Mr. Neelon had asked a Mr. Sisterson, who was his salesman at the mill, and apparently a confidential agent in the election contest, to go to Mrs. Stewart to see "what was the matter with her," and Mr. Sisterson was at her house when this letter was being written, and was told of it by Mrs. Stewart. The letter was promptly sent by Stewart,

and delivered to some one at Mr. Neelon's mill or office. Mr. Neelon says the contents of it did not come to his knowledge till after the election. There is quite room on the evidence for a different inference, but the matter is not very important. The letter shows, at all events, the terms on which the Stewarts understood the negotiation to be proceeding. Following Sisterson's visit and the sending of the letter, the facts next in order of time are shown by entries in Mr. Neelon's books, where Stewart is charged, under date 13th Jan., \$4.44 for flour, &c., and on the 16th Jan., \$11.17. The election was on the 18th January. On 10th February Stewart is charged with flour, &c., to the amount of \$3.51, making in all \$19.12. Afterwards, Mr. Neelon himself settled with Stewart, allowing him \$30 additional compensation in respect of the accident, which he paid by giving him in cash the difference between the \$19.12 and the \$30.

The learned Judge having been satisfied, upon evidence of this character, that Mr. Neelon had directly or indirectly, by himself or by some other person, given, offered, or promised money or valuable consideration to Stewart in order to induce him to vote, it is impossible for us to say that he ought to have come to any other conclusion.

This disposes of the appeal without the necessity of discussing the other matters covered by the very careful and elaborate judgment of the learned Judge. One of these subjects, viz., the construction of section 66 of the Act of 1866, and the effect of the Act of 1873, when that section has been violated with the knowledge and consent of the candidate, we have already had occasion to notice in the judgment of this Court in the *North Wentworth case* (*ante* p. 343). And we have further to construe section 66 in the *South Ontario case* (*post* p. 420), in which judgment is now to be delivered.

With respect to the charge founded on what is spoken of as the "Sunday raid," I shall merely say that I am not prepared to assent to the application to that case of

the principle on which the *London case* (a) was decided, or to hold that on that principle alone the candidate is to be fixed with knowledge of the bribery committed by his agents, however gross and deliberate that bribery may have been, and however strong may be the suspicion created in our minds that the candidate can hardly have been quite ignorant of what was being done on his behalf. I entirely assent to the distinction which was clearly pointed out by Mr. Robinson in the very able argument which he addressed to us, between the case of a city where, within a comparatively small area and for the space of two or three weeks, bribery had been going on so extensive and so flagrant as to be appropriately described as pervading the atmosphere; where not to ascribe knowledge of it to the candidate in whose interest it was committed, and who was on the spot, would be to forego experience and give no weight to probabilities so strong as to be almost irresistible; and where, in the graphic language of the same learned Judge whose judgment is now on review, one could "as readily believe it possible for the respondent to have been immersed in the lake and to be taken out dry, as that the acts of bribery which the evidence discloses to have been committed on his behalf, almost under his eyes, in his daily path, with means of corruption proceeding from his own headquarters and from the hands of his confidential agents there, could have been committed otherwise than with his knowledge and consent," and the present case, where what was done was done only a few hours before the election, and though initiated in the town where the candidate lived and by agents who were in his confidence, was carried out at a place several miles away, and amongst the voters in one locality only of a county constituency.

I agree that the appeal should be dismissed with costs.

Moss, J. A., concurred.

Appeal dismissed with costs.

(9 *Journal Legis. Assem.*, 1875-6, p. 199).

(a) Reported Dominion Elections, 1874, *post*.

SOUTH ONTARIO.

BEFORE MR. JUSTICE WILSON.

WHITBY, 11th to 13th May, 1875.

BEFORE THE COURT OF APPEAL.

TORONTO, 22nd December, 1875, 22nd January, 1876.

ABRAM FARWELL, *Petitioner*, v. NICHOLAS W. BROWN,
Respondent.

Agency—Political association—Committees—Corrupt practices—Treating during polling hours—"Municipality in which polls are held"—Respondent treating himself during polling hours—New charge in Appeal—Particulars.

The respondent was nominated by a Conservative association, and he accepted the nomination. The delegates to the association were to do all they could to secure his election. A committee was appointed in O. to canvass the town, and a committee-room was engaged and paid for by the association, voters' lists were procured and used as canvassing books, and members were appointed to canvass parts of the town, and reports were made to the committee of the result of the canvassing. The respondent, who resided at W., did not attend the meetings, but knew they were canvassing for him, and gave them blank appointments of scrutineers to fill up, which they did, but the respondent did not know who composed the committee.

Held, per Wilson, J., that the respondent, by authorizing such committee at O. to appoint scrutineers, made them his special agents for that particular matter and for that occasion only, and did not adopt them as his general agents for all the purposes of the election.

One T., a member of such committee, canvassed actively for the respondent and to his knowledge, and on the nomination day attended a meeting of the respondent's friends in W., at which the respondent was present, and at which arrangements were made about canvassing and getting out votes, and generally about the election.

Held, by the Court of Appeal (*Wilson, J., dubitante*), that T. was an agent of the respondent for the purposes of the election.

One G., a member of the same committee, had a voters' list, and canvassed for the respondent, and stated he had no doubt the respondent expected him to vote and work for him.

Held, per Wilson, J., that G. was not an agent of the respondent.

The committee at the town of W., having been recognized and attended by the respondent, were held to be his agents.

One B. was a member of the committee at W. for the respondent's election, canvassed for him, and met him at the committee-rooms once or twice. B. was also appointed in writing by the respondent to act as scrutineer for him on the polling day, and during polling hours gave whiskey to the Deputy Returning Officer in the polling booth.

Held, per Wilson, J., that B., while acting as such scrutineer, was not acting in his former capacity as committee-man or agent of the respondent, and that his appointment as scrutineer did not empower him to do an act of treating so as to make the respondent answerable for it.

One C., a member of such committee at W., partook of whiskey in the kitchen of a tavern at W. during polling hours, and also, when bringing a voter from the town of O. to the town of W. (within the same electoral division) to vote at W., treated himself and the voter in O.

Held (*Draper, C. J. A., dissentiente*), that C. was not guilty of corrupt practices within s. 66 of the Election Law of 1868.

Held, by the Court of Appeal (*Draper, C. J. A., dissentiente*), that s. 66 of the Election Law of 1868 (32 Vic., c. 21), as amended by 36 Vic., c. 2, applies only to shop, hotel and tavern keepers, who alone are liable to the penalties for keeping open the tavern, etc., and for selling or giving spirituous liquors during the prohibited hours.

Held, by the Court of Appeal (reversing *Wilson, J.*), that the prohibition in such section (66) as to opening taverns and giving or selling liquor "in the municipalities in which the polls are held," applies to all the municipalities within the constituency, irrespective of the place where the vote is given or to be given.

The respondent, on polling day and during polling hours, went to a tavern at W. and partook therein of spirituous or fermented liquor, for which he did not then pay.

Held, per Wilson, J., that he did not "sell or give" spirituous liquors within the meaning of s. 66 of the Election Law of 1868.

The petitioner was not allowed to urge before the Court of Appeal a charge of corrupt practices against the respondent personally, which had not been specified in the particulars, or adjudicated upon at the trial of the petition.

The petition contained the usual charges of corrupt practices.

Mr. Bethune and Mr. A. G. McMillan for petitioner.

Mr. Hector Cameron, Q.C., and Mr. Billings for respondent.

The evidence affecting the election is set out in the judgment.

WILSON, J.—The petitioner contends he has proved corrupt practices to have been committed by W. H. Thomas and F. E. Gibbs, who, he says, were the general authorized agents of the respondent, and that he has proved corrupt practices to have been committed by W. H. Billings and Francis Clark, who, he says, were the general agents of the respondent, but if not, he says they were his agents for the purpose of charging him with treating, and that will be sufficient for the petitioner's case. He charges also that the respondent having had liquor sold or given to himself during the polling hours at Ray's tavern, in the town of Whitby, was personally guilty of

a corrupt practice within the 66th section of the Election Law of 1868.

It must be considered—

Firstly : Whether Mr. Thomas and Mr. Gibbs were, or either of them, and which of them was the general agents or agent of the respondent ? Secondly : Whether Mr. Billings and Mr. Clark were, or either of them, and which of them was the general agents or agent of the respondent, and if not the general agents or agent, whether they were, or either of them was, the agents or agent of the respondent so far as the alleged corrupt practices charged are concerned ? Thirdly : If Thomas were the agent of the respondent, has he been guilty of corrupt practices ? Fourthly : If Gibbs were also an agent, has he been guilty of corrupt practices ? Fifthly : If Billings were an agent, has he been guilty of corrupt practices ? Sixthly : If Clark were an agent, has he been guilty of corrupt practices ? Seventhly : If Thomas were an agent, has he been guilty of corrupt practices by having had given to him a glass of brandy by G. Hodson at the village of Columbus in polling hours ? Eighthly : Whether the respondent was guilty of corrupt practices by having had sold or given to him at Ray's tavern, by the person attending the bar there, liquor during polling hours ?

The first question I have to deal with is whether Thomas was the agent of the respondent for the purpose of the election ? That of course depends upon the evidence, and it is to this effect. Thomas said : " I was at the convention for choosing delegates, and was chosen one of them. I think it was called by the Conservative Association for the South Riding. I am a member of the association. The meeting was at Brooklin. The delegates retired to an adjoining room and chose Mr. Brown by ballot. Brown accepted the nomination two or three days after. It was understood these delegates were to do all that they could to secure Mr. Brown's election. There was a meeting at the committee-room in Oshawa a few days after Brown's acceptance ; don't know who engaged or paid

for the room. The committee met there nearly every evening until the election was over. It was arranged that certain members of the committee were to canvass certain parts of the town. I was to canvass generally. There were voters' lists got and put into the form of books for canvassing; think the Conservative Association paid for the use of the room. The scrutineers were appointed by the committee. I suppose blank appointments, signed by Mr. Brown, were got and filled up by the committee. I did what I could in the riding for Mr. Brown. I had not much else to do at the time, and I went into this election to win. I met Brown at Oshawa during the canvass. He was not at our meetings. No arrangement that he was not to attend. From anything that passed between us, I do not know he knew I was canvassing for him; I suppose he knew I was doing all I could for him. There were reports made to committees of the result of the canvassing. On nomination day, after the nomination was over, a meeting of Brown's friends was held in the room over the *Chronicle* office in the town of Whitby. Brown came to it; it was to arrange about canvassing and about getting out voters and generally about the election. I was there only a few minutes. There were volunteer teams from a number of people for the election, and among them from myself. I drove one Hoey as far as Cedarville to vote, drove him in the team I had hired to go to Port Perry in the North Riding to vote; did not hire the team to take him, but to go to Port Perry. I had \$50 bet on the result of the election."

That is the whole of the evidence as to acts on which the agency for Brown is founded and from which it is to be inferred, excepting the acts of treating, which are the corrupt practices to be connected with the alleged agency. Do these acts establish the agency? The Brooklin meeting was called by the Conservative Association before there was any candidate. The meeting of the delegates was also before there was a candidate. Brown's first act was two or three days after his nomination by the delegates.

So far, Thomas was not his agent ; he was only a member of the party which supported Brown afterwards, and it may be an active member, too. The delegates were to do all they could for Brown. Brown resided in Whitby ; Thomas resided in Oshawa. The committee meetings Thomas speaks of were held in Oshawa. The committee-room was paid for by the Conservative Association. It may be presumed that all that was done up to the time of the hiring of the committee-room in Oshawa was done by the Conservative Association, or by the voluntary contributions of the electors in order to secure a representative on the side of that body or party. It is what took place after that which must be chiefly relied upon to connect or identify Brown with the acts of Thomas, although the previous conduct and position of Thomas must not be wholly lost sight of. What happened after the committee-room in Oshawa was opened was this : The committee met almost every night upon election business. They provided for canvassing the town. Thomas was to canvass generally ; he was not restricted to any particular division of it. Voters' lists were got by the committee for canvassing. Thomas met Brown at Oshawa during the canvassing. Thomas supposes Brown knew he (Thomas) was doing all he could for him. Brown signed blank appointments of scrutineers, and delivered them in some way to the committee in Oshawa to fill up, and they did so. At the meeting held after the nomination on nomination day, at which Brown was present, it was arranged that there should be canvassing, voters brought up, and other usual means taken to forward the election. Thomas says he went in to win at this election, and he did what he could do for Brown all over the riding, and he had \$50 bet on the result of the election.

There can be no doubt, then, that under these circumstances, and from his conduct on the polling day, that Thomas was a very active committee-man and partizan for Brown, and that he was clearly an agent of the committee. I was disposed to think very strongly that Thomas

was shown to be an agent of the respondent during and for the purpose of the election, on the following grounds. Brown knew there was a committee sitting in Oshawa in connection with his election, because he entrusted that committee with blank appointments of scrutineers signed by him, to fill up with the names of such persons as the committee selected for that duty; in fact, that he left such blank appointments with the committee was a delegation of power to that body, to that extent at all events, to act for him. Brown knew Thomas was doing all he could for him, although not from anything which was said between them, and although it does not appear Brown knew Thomas was a member of the committee, and Brown knew generally that canvassing and the other ordinary proceedings as to elections were being carried on in Oshawa for him, and I thought it must be said that Brown did know that Thomas was doing all he could for him during that period of canvassing, and so that there was sufficient authority conferred on Thomas to continue so to act, and of a ratification by Brown of what Thomas had already done.

If it were not that Brown gave authority to the committee to appoint the scrutineers, I think it could not be said that the evidence showed that Brown was identified with the committee, but that it was a committee merely in his interest, got up either by the Conservative Association or by voluntary contributions of the people of the village favorable to that party and to the candidate. *Staleybridge case* (1 O'M. & H. 66); *Westminster case* (1 O'M. & H. 91).

Having given that authority, he did to that extent constitute the committee his agents; but I think he thereby did not adopt them as his general agents for all purposes, and so constitute each member of it his representative to canvass or to make him responsible for the bribery or treating of the members. Empowering a person to act as objector-general at the revision of voters' lists does not give him authority to bind the candidate

by an act of bribery: *Wigan case* (1 O'M. & H. 188). I thought that strictly agency on the part of Thomas was established by the evidence referred to, although there was no express or direct authority given by Brown to Thomas to canvass generally or to do all he could for him. I did not think it was conclusive evidence of agency; but that it was evidence nevertheless, and it certainly is so.

But I am disposed to doubt whether agency has been established either in fact or by implication, for the following reasons: The original meeting to choose delegates was called by the Conservative Association, Thomas being at the time a member of it. The delegates so chosen, of which Thomas was one, nominated Brown as their candidate. The committee-room in Oshawa was hired by the same association. How the committee was appointed does not appear. Thomas was a member of it. Brown was never at any of its meetings. There is no evidence he knew who were the members comprising it. That committee unquestionably did canvassing, and authorized it to be done, for Brown, and managed the election matters generally for their candidate. And if Brown can be identified with it, then agency by the committee and by Thomas also will be well established against Brown. But can Brown be identified with the committee? He did not appoint it; was never at it; did not know who composed it; excepting the fact that he gave it authority to appoint his scrutineers, there is no evidence which shows that he knew there was such a body at all. In the *Staleybridge case* (1 O'M. & H. 66), Blackburn, J., speaks of a "committee not selected by the respondent, but consisting of *bonâ fide* volunteers chosen by the voters of the district as persons in whom they had confidence, to be the head of their own department, and to act together;" and again, at p. 72, he says: "But in such a case as this, when I am convinced that they were really *bonâ fide* volunteers, voters acting for themselves, not selected by the member or chosen by him at all, but really *bonâ fide* in a business-like manner, the voters of the district choosing sober and

respectable men in whom they had confidence to be the head of their own department, and acting together, a messenger who is sent by one of them is not so directly connected with the candidate or any of his recognized agents as to make him responsible for his misconduct in offering a bribe." So also in the *Westminster case* (1 O'M. & H. 91), Martin, B., said: "It was proved that one Davis was a person who canvassed for a society called 'The Working-man's Conservative Association.' This society was assumed to be formed of working-men, but next to nothing was subscribed to it by working-men; all the rest of the funds of the society came from a subscription of £60 from the respondent himself (he withdrew from the society, however, on becoming a candidate), two subscriptions from his partner, and various other sums from persons who subscribed, expecting this money to be expended in promoting their political views. The funds of the society were spent in canvassing persons to vote for the respondent, but the evidence was that it was an independent agency, and that this body was acting on its own behalf." And on this statement of facts, the Judge said, "he should not hold Davis to be an agent."

I am not prepared, upon the evidence and upon the statement of the law to which I have referred, to say that it was Brown's committee appointed by him, or adopted by him (excepting as to the scrutineers), or authorized by him to canvass for or to manage the election contest generally for him. I have already said that the authority by Brown to this committee to name scrutineers for him was, in my opinion, a special authority to act in that particular matter and for that occasion only, and that it cannot be extended to the adoption by him of the committee as his general agents for all purposes.

If the committee were not of Brown's nomination or adoption—were not, in fact, his general agents deriving their authority from him as all agents must do, then it will be very difficult to make out that Thomas was an agent of Brown. He had nothing personally to do with

Brown excepting that during the canvassing he saw Brown in Oshawa. He did not speak to Brown of canvassing, but he says he supposed that Brown knew that he (Thomas) was doing all he could for him in the election. If these circumstances be of such a nature that it can be inferred that Brown accepted Thomas from thenceforth as his agent, it is of no consequence whether the committee was appointed by or adopted by Brown or not. The statement of Thomas shows rather that he was a volunteer and had no authority from Brown, or if he were acting under any authority, that he was acting for and under the committee. Now a candidate is not obliged, as a rule, to repudiate all voluntary acts of service. He may accept them at times without binding himself to all that such persons may do for him. As in the *Staleybridge case* (1 O'M. & H. 70), where Blackburn, J., said: "The effect of that would be to say that whenever there were volunteers who were acting at all, and whose voluntary acting was not repudiated by the candidate or his agents—whenever, in fact, a person came forward and said, 'I will act for you and endeavor to assist you,' and the candidate or his agent said, 'I am very much obliged to you, sir,'—any corrupt or improper act done by that volunteer, although unconnected with the member, would render the election void. To lay down such hard and fast rules as that would at times work great injustice." But Brown did not say to Thomas that he (Brown) was very much obliged to Thomas for anything he supposed Thomas was doing. The most that can be said is that if Brown did know Thomas was doing all he could for him, he did not object to it or repudiate his acts. But a candidate by mere non-interference does not necessarily bind himself by or to what another may be doing for him; that alone will not make the other his authorized agent. It must be remembered too that Thomas did not tell Brown he was doing all he could for him. He said that nothing of the kind was mentioned; that all he said was that he supposed Brown did know that he (Thomas) was doing all he could

for him. After much hesitation, and I must say to a considerable extent against my own primary impression, I think the agency of Thomas has not been established as against the respondent. Thomas was not the direct representative of Brown. He was the agent of and for the committee, and if the agency of the committee had been proved, the agency of Thomas would have been proved too. But I am not satisfied the committee are shown to have been the general authorized agents of the respondent.

As to Mr. Gibbs, the evidence as to him is: "I was working in Brown's interest in Oshawa. The committee there was divided into wards. I was interested in the Son's Hall ward particularly, but (in answer to the words of Mr Bethune's question) I had a roving commission over the rest of the town. We met at the committee-rooms. Oshawa was divided into sections; each section had a committee of its own. I canvassed where I thought it would be of use. I had a voters' list. We raised no fund to pay expenses. I did not contribute one dollar. No arrangement that I am aware of to pay expenses. I was in Oshawa on polling day. There were some public meetings held in Oshawa. Brown was there. I am not aware of Brown's canvassing a single man in Oshawa. No conversation with him about our canvassing. I said to Brown I had no doubt Oshawa would do its duty again. I have not the least doubt that Brown expected me to vote and to work for him too. I spent no money at the election but my own personal expenses, and they were very trifling, a glass of beer and a cigar once in a while; I hired no teams." Upon that evidence I cannot say there is agency established. There is the fact that Gibbs was one of the committee and was canvassing generally, but not by authority from Brown unless through the committee; but there is still the same lack of evidence to prove that the committee was appointed by Brown, although it was unquestionably acting for him and in his interest. There is also the same lack of evidence that Brown personally

adopted or authorized Gibbs' individual acts. I therefore find the first question against the petitioner—that Thomas and Gibbs were not, according to the evidence, the authorized agents, nor was either of them the authorized agent of the respondent at the time of or during the election.

As to the second question, relating to the alleged agency of Billings and Clark or of either of them. The evidence as to Mr. Billings is: "I took part in the election; was on Brown's committee in the town, held over the *Chronicle* office. I was not an active member. I canvassed those I met. Saw Brown every day at that time; saw him at the committee-room once or twice; no other committee but that one in the place. I was a scrutineer at one of the polls here for Brown. There was whiskey at the poll that day. I took it for lunch. I gave the Deputy Returning Officer some of it that day at lunch time; gave it to no one else."

I think on this evidence that Mr. Billings, while acting in a special character as scrutineer, and under a special written authority from the respondent, cannot be said to have been in any way acting in his former capacity of a committee-man, or agent of or for the respondent; and when he gave the whiskey to the Deputy Returning Officer at lunch time, and took some as part of his own lunch, was doing an act in no way as a representative of Mr. Brown. If the authority to act as an objector-general in settling the voters' lists will not make such person the agent of the candidate, to fix him with bribery committed by such person—*Wigan case* (1 O'M. & H. 188)—the appointment of Mr. Billings to act as scrutineer will not empower him to do an act of treating and to make the respondent answerable for it. Upon that occasion Mr. Billings' authority was limited to that especial duty, and he had no power whatever to assume to act beyond it: *Bodwin case* (1 O'M. & H. 117); *Hereford case* (1 O'M. & H. 194). The fact that he gave whiskey to the Deputy Returning Officer and not to any voter, shows that he did not assume to be acting as a committee-man

or as a general agent of the respondent, if he can be said even to have been one. I am of opinion Mr. Billings was not an agent of Brown's who could bind him for the act of treating, if it be one.

As to Clark's alleged agency. He said: "I attended Brown's committee meetings at the last election. They were held over the *Chronicle* office. I attended not over three times; went there to help on Brown's election. I would like to see Brown elected. I don't remember asking any one to vote for Brown in the Orange lodge, or out of it. I went on the polling day for Jordan, a voter, to vote for Brown. I got him and brought him to vote. I was at Bandell's tavern that day in the kitchen. I took a drink there between 9 a.m. and 5 p.m. in Whitby. I had a glass at Oshawa too. I treated myself there and Jordan also. I paid for it; think it was whiskey we had. Jordan worked in Oshawa but lived in Whitby, and had a vote here. Fothergill volunteered to drive me there for Jordan, and we brought him up. There was no particular part of the town given to me to canvass. I think I saw Brown once at the committee meeting. I know of no other body organized for Brown's election but this committee. Jordan went into the polling place, and I suppose he voted. He does not belong to my lodge; he is a Roman Catholic." I think the Whitby committee is shown to have been Brown's committee, at which he attended several times. The members were to canvass generally for him, and Mr. Billings did do some of it. Clark was one of the committee, and he was authorized to canvass, and was not limited as to any particular part of the town to work in. With such authority he went to Oshawa for Jordan, a voter, and brought him up to Whitby to vote for Brown, and it is believed Jordan did vote, as he went into the poll for that purpose. While Clark had Jordan in his company at Oshawa, and before they left it for Whitby, where Jordan was to vote, he treated himself and Jordan to a glass of whiskey each, and he paid for it.

The third, fourth, and fifth questions it is unnecessary to say anything of, because if Thomas, Gibbs, and Billings were not the agents of the respondent, there were no corrupt practices to make him answerable for the acts proved against them.

The sixth question, which relates to the treating by Clark, an authorized agent of the respondent, I must now dispose of. After much consideration, and of doubt too, I come, with some hesitation, to the conclusion that the treating by Clark, an authorized agent of the respondent, of the voter Jordan, was not an act within the terms of the 66th section of the Election Law of 1868, because the liquor was not so given by Clark to Jordan within the limits of the municipality, where the poll of the town of Whitby was held. I think that is the reading of that part of the section which it was said was applicable to the case. The whole section is as follows: "Every hotel, &c., shall be closed during the day appointed for polling in the wards or municipalities in which the polls are held, and no spirituous or fermented liquors or drinks shall be sold or given to any person within the limits of such municipality during the said period, under a penalty of \$100 in every such case." If a poll is held in a city in one of two wards into which the city is divided for electoral purposes, the hotels, &c., in such ward in which the poll is held must be closed on the day of polling. They need not be closed in the other, but no liquor is to be sold or given throughout the whole of the city, that is, in the whole municipality, during that day. If an election is going on in a town and in another municipality forming one electoral division, the hotels, &c., in all the municipalities in which the polls are held must be closed, and no liquor is to be sold or given within the limits of such municipality during the said period. It is not within the limits of such *municipalities* nor within the electoral division, nor within *any* such municipality, but within *such* municipality; and the question arises when there are more municipalities than one in the electoral division in which the polls are held,

what municipality is it that is referred to by *such municipality*? Will it apply to the giving of liquor in the municipality of Oshawa, although a poll for that election is held there, while the poll to be voted at is in the municipality of the town of Whitby, both municipalities being in the one electoral division of South Ontario?

If it will apply to such a case as that, it will equally apply to liquor given in North Ontario or in the city of Toronto, in which places elections are going on when the vote is to be given in South Ontario, for which division an election is also going on upon the same day. I understand *such municipality* to be the municipality "in which the polls are held." Which poll is it that is referred to?

If a person were prosecuted for the penalty of \$100 for violating this enactment, I think it would have to be held that *such municipality* applied to the municipality "in which the polls are held," and that these words being governed by the singular term of *municipality*, must mean the one in which the poll to be voted at is held. I am only speaking of the 66th section, which, it is said, applies to the *fact* only of selling or giving liquor, and *not* to the intent with which it is given, as in the ordinary cases of treating, and I feel no disposition to extend the operation of a provision for which so comprehensive a grasp is claimed to have been given, so long as I do not see that any such meaning must necessarily be attributed to it. I do not say positively that my construction of the 66th section, as it respects Clark's treating Jordan at Oshawa while the poll at which the vote was given was in Whitby, is certainly right. I give it with some degree of diffidence. But I think it is correct, and I think it is the only sensible one which can be given to it. At the present, I determine that Clark, although an agent of the respondent, did not do an act in treating Jordan in Oshawa, while he voted in Whitby, which was contrary to the 66th section of the Election Law of 1868; and my answer to the second question, therefore, is against the petitioner, both as regards Mr. Billings and Mr. Clark, but upon different grounds, as before stated.

The seventh question, which depends on whether Thomas was guilty of drinking at Hodson's, it is not necessary to answer, as I have not found the agency to be proved. If it had been proved I should have been obliged to have held, as in Clark's case, that the glass of brandy which Mr. Hodson gave to Mr. Thomas at Columbus, was not liquor given in the municipality in which the poll was held, so far as Thomas was concerned, who voted in Oshawa. If Thomas had not voted at all, I understand it would still be contended by the petitioner that if he had been an agent of the respondent, and the innkeeper gave to Thomas a glass of brandy at any place within the electoral division, or even beyond it, if a poll happened to be held there at the time, it would invalidate the election for this South Riding.

I can see a way in which definiteness can be given to the words *such municipality*, before mentioned, where a person is to vote, because it may mean the municipality where the vote is given or to be given. But when the agent of a candidate, who has no vote, is given liquor in *such municipality*, I do not know to what municipality the reference is made. Nor do I know what municipality is referred to if the agent sell or give liquor to a person who is not a voter in the electoral district. I should say also that this act of drinking by Thomas was not an act of *selling* or *giving* liquor within the 66th section, but of receiving only. As to the act of giving liquor to voters and others by Thomas at Hallett's hotel, I am of opinion it has been proved, and if the agency by Thomas had also been proved, the giving of such liquor must, I fear, by the rigid construction of the 66th section, although there was no corrupt intent, have made void the election. But the agency was not proved, in my opinion, as before stated.

The eighth question is, What is the effect of the respondent having had liquor sold or given to him at Ray's tavern in the town during the polling hours? I think the evidence shows, as a fact, that he did get spirituous or fermented liquor during these hours at Ray's tavern.

Samuel Ray says so. He says Brown called for a treat. He drank twice that day. No one drank with him. He has not paid for it yet. It is very clear, I think, that his *buying* or *receiving* drink is not selling or giving it within the 66th section. It is said that as there can be no sale or gift without a purchase or receipt, there can be no complete sale or gift until the other contemporary acts take place; but that where the sale or gift is complete, the purchaser or receiver is as much an offender against that section of the Act as the seller or giver, because the Act does not say *no person* shall sell or give, but *no liquor shall be sold or given*, and it is sold or given when there is a purchaser or receiver, and in that case the purchaser or receiver is violating the Act by joining in the transaction of sale or gift as much as the actual seller or donor.

A person cannot be both seller and buyer, and if the seller is subjected to a penalty, that, by no force of language or reasoning, can be made to extend to the buyer. Both may be specially made liable as both are equally culpable. The statute does not here speak of a seller or giver, but it says no liquor shall be sold or given to *any person* under a penalty. I do not think that includes the person who buys or receives in the penalty even without the words to any person; I think I may say I have no doubt that it is the seller or giver only who is liable, for he is the person who makes the sale or gift; the other cannot make it, although he is a receiving party to perfect it. I fully adopt the opinion of Draper, C. J. A., as given in the *West Toronto case* (*ante* p. 179), decided a few days ago.

If a statute declared that no promissory note should be made without a stamp being attached to it under a penalty, would the payee be liable for the penalty if the stamp were not attached? I think he would not be.

This question I also decide against the petitioner.

If this enactment as applied to Brown, the candidate himself, in taking a glass of liquor as he did in Ray's tavern, is enforced, as it is said it must be, then, as the

candidate himself at his own expense drank a glass of whiskey or beer, he must be personally guilty of a corrupt practice, and besides the loss of his seat and a pecuniary penalty, he becomes incapacitated for eight years from being elected again. Such results must make me careful how a statute is expounded which leads to such highly penal consequences.

The more comprehensive the provision against drinking and treating at such a time can be made, the better it must be for electoral purposes and for all persons concerned ; but it cannot be made so absolute or unqualified as it now reads, and as it is said it must be construed.

So far as this case has now gone, I must decide the whole of it in favor of the respondent. I have had grave doubts, from which I cannot say I am yet relieved, with respect to the agency of Thomas and Mr. Gibbs, although with respect to Mr. Gibbs it may not be of any moment whether he was an agent or not, for I do not think his treating himself was against the Act, as I have before stated, and I have very great doubt whether his treating the two commercial travellers, strangers in the division and not voters, can be an act prohibited by the 66th section just construed ; and besides, there was no evidence given of the kind of liquor which was taken by these two strangers ; there was nothing to show it was spirituous or fermented liquor ; and I do not feel disposed to supply such a defect of evidence, even if it could be done by a fuller examination under the circumstances.

With respect to Thomas, he I think did, as I have before stated, violate the law, and according to the effect of the 66th section if he were an agent of the respondent ; but I think he was not, although he was an agent of the committee, but the committee were not the agents of Brown. Upon that point, and also as to the effect of Clark (who I find was an agent of the respondent) treating Jordan outside the municipality in which Jordan voted, I entertain, as I have already said, a very considerable degree of doubt, and I shall of course be very glad if

the petitioner will carry the matter, by way of review, to the Court appointed to reconsider such questions for their more deliberate judgment.

The costs of this part of the case must abide the event of the trial. I need not say that I shall be obliged to report to the Speaker, if I have to report at all, that the evidence shows there has been a common and notorious violation of the Act by the keeping open of inns, and taverns, and other places where spirituous liquors are usually sold, and selling to all persons during the prohibited hours of the election day, and during nearly the whole of that day, and that some measures should be taken against all those who have so shamefully defied the law. I feel obliged to say that I regret to find that the respondent should have been in any tavern during these hours, and that he should have drank there, or that he should have been there at a time when others were improperly drinking, and that other persons of influence and good position should have been in these places at such a time, or for a purpose which they knew was against the law, and when their example was likely to be an encouragement to others of a different station from themselves.

[Mr. JUSTICE WILSON, after the delivery of judgment, added the following inemorandum] :

I should perhaps have stated more clearly the grounds on which committees, discharging the usual functions of election committees, should be considered to be or not to be the agents of the candidate in whose interest they are acting, because I am not sure that my first impression on the subject was not the more correct one, that a committee known by the candidate to be acting for him, although neither appointed nor accepted by him, should, as a rule, be held to be the committee of the candidate, for whose acts he is responsible, because they are openly acting for him, and he is receiving the benefit of their services and exertions. The two cases to which I have specially referred in the judgment delivered, adopt the view very strongly of voluntary committees and agents

being so entirely independent of the candidate that he is not in any way responsible for their conduct, and no doubt some freedom must be afforded in such cases for voluntary independent operations, and for the acts of the persons so aiding in the election, which should not be binding on the candidate.

While the *Taunton case* (21 L. T. N. S. 169) is a decision very much the other way: that committees and persons so forwarding the general purpose of the contest have the power of binding the candidate they are assisting, unless he, with a knowledge of their proceedings, repudiates their work.

There is much force in this view, and I confess it more nearly represents my own original impression, before referred to. It may not, however, be entitled to prevail so absolutely, as stated in the last mentioned case. The candidate cannot be required, in every case, to suppress all help from every voluntary association, and to repudiate every effort of individual enterprise. The fact of the candidate having left blank appointments of scrutineers to be filled up by them for him, is a strong ground for holding a candidate to have adopted the committee as his representatives and, I might say, as his agents. Probably I might have so decided with more leisure for consideration, and then the question as to Thomas' agency would have depended upon what he did at Hallett's tavern and the effect of it, as to which I expressed an opinion at the time which I think to be correct.

The petitioner appealed from the decision of Mr. Justice Wilson to the Court of Appeal—setting out among others the following ground of appeal :

“That the keeper of the hotel called ‘Ray’s hotel,’ in the town of Whitby, was guilty of a corrupt practice in giving spirituous and fermented liquors at his tavern on the day of polling, and during the hours appointed for polling, to divers persons, and that the respondent was present when liquor was so given as aforesaid, and consented thereto.”

The order for particulars of corrupt practices provided that the petitioner should deliver within a limited time "full particulars in writing, so far as known to the petitioner, of the alleged corrupt practices in the said petition referred to, with names and additions, dates and places" (and other specified particulars in detail); and the order concluded as follows: "And in default the petitioner shall be precluded from giving evidence of such particulars on the trial thereof."

In the particulars delivered pursuant to the order, the charge was thus stated: "The respondent on the said day of polling, and during the hours appointed for polling, gave spirituous and fermented liquor, and drank with divers electors, to the petitioner unknown, at Ray's hotel in Whitby."

Mr. Bethune for petitioner.

Mr. Hector Cameron, Q.C., for respondent.

Counsel for the respondent objected that the charge involved in the first ground of appeal was not in the particulars; that it was urged now for the first time; and that, by the order for particulars, the petitioner was precluded from raising it.

The COURT declined to entertain the first ground of appeal, as the allegation therein contained differed in a material point from the charge specified against the respondent in the particulars; that the particulars could not now be amended; and because the charge had not been inquired into nor adjudicated upon by the learned Judge at the trial of the petition.

Judgment in appeal was delivered on the 22nd January, 1876, as follows:

DRAPER, C. J. A.—I have doubted the correctness of the decision in Clark's case, and am not sorry to find that the learned Judge had also a considerable degree of doubt, as I should not, unless upon the clearest conviction, depart from his deliberate opinion.

The facts seem to be as follows: One Jordan was a voter, whose residence was in Whitby, and who was a voter in that municipality. During the time of the election he was working in Oshawa—both places, though separate municipalities, being within the electoral division of South Ontario. Clark, whose agency appears to be sufficiently proved, went to Oshawa on the polling day to bring Jordan up to vote at Whitby, and treated him in a hotel at Oshawa to a glass of whiskey. This was held not to be a violation of the 66th section, because the liquor was not given by Clark to Jordan within the municipality in which the poll for the town of Whitby was held. No question was asked as to the hour when the treating took place—no doubt suggested as to its being within the hours appointed for polling, *i.e.*, from nine a.m. to five p.m. Considering that to make this treating a corrupt practice, which, if committed by an agent without the actual knowledge and consent of the candidate, would avoid the election, it cannot have been overlooked at the trial; and as the evidence shows that Clark drove from Whitby to Oshawa to get Jordan; that Clark had told him when they got to his (Jordan's) own place that he could stop there and go down after dinner and vote; and that no point has been suggested on either side that the treat was or was not within the hours appointed for polling, I shall assume it to have been so.

I have already expressed my opinion upon this section in the *Lincoln case* (*ante* p. 391), but I avail myself of this opportunity to add a few observations.

So far as keeping peace and good order at elections is concerned, it can make little difference, as between two coterminous wards or municipalities, in which of them persons who commit a breach of the peace drank the liquor which overcame their discretion and influenced their disorderly proceedings. The distance between municipalities in which polls are being held at the same time may be such as to render quite unnecessary any provision against dangers to arise from the prohibited

cause, and ought to repel the idea that the Legislature had the prevention of any such danger in their contemplation. But it would be little if at all less absurd to hold that treating voters in municipality A—who, being excited to lawlessness and influenced by liquor, went into the adjoining municipality B, where they created a disturbance—would not be within the mischief intended to be prevented by the Act, as if the tavern in which the liquor was given to them was in municipality B.

Further; I see nothing in sec. 66 which makes the fact that the person to whom liquor is given is or is not a voter an element in the matter prohibited, that is, selling or giving to *any person* within the limits of such municipality. There is no necessity that a man should be a voter to make selling or giving liquor to him on the polling day an offence subject to penalty. In Jordan's case, if he had not been a voter, giving liquor to him in a tavern in Oshawa would have been a violation of the law, assuming as I do that the day in question was appointed for holding the polls in the municipality in which the tavern stood.

I think we surmount most of the difficulties suggested by holding that section 66 is confined to the regulation of hotels, taverns and shops in which liquors are ordinarily sold. On the day appointed for polling they must be kept closed under a penalty. No liquor must be sold or given to any person in any such hotel, &c., on the polling day. The words, "within the limits of such municipality" may perhaps be redundant, but the word *such* confines the construction to the municipalities mentioned in the former part of the section, which may, I think, be properly treated as part of the description of the hotels, &c., which are to be kept closed, namely, hotels, &c., situate in "the municipalities in which the polls are held."

Adopting this conclusion, I am of opinion that Clark was an agent of the respondent, and did, in violation of section 66, give spirituous liquors to one Jordan in a tavern in Oshawa, which was a municipality in which a

poll was held on that day appointed for the polling and within the polling hours, and that the election was therefore void and should be set aside.

My brothers consider section 66 of the Act of 1868 does not affect any person except the keeper of the hotel, tavern or shop, who is subjected to a penalty in three cases :

1. Not keeping the hotel, &c., closed.
2. Selling liquor in his tavern, &c., during the polling day.
3. Giving liquor in his tavern, &c., during the polling day.

The whole three are made corrupt practices if committed during the hours appointed for polling. I hope the Legislature will remove the doubts by a clear statement.

BURTON, J. A.—The three charges, assuming that in all or some of them the agency is established, are charges of giving liquor in a tavern by an agent within the hours appointed for polling, and involve the necessity of our placing a construction upon the language of the much-debated 66th section of the Election Law of 1868.

We had occasion to consider this section before in the *North Wentworth* (ante p. 343) and *North Grey* cases (ante p. 362), and then held that there having been a clear violation of the section by the hotel-keeper, which was made a corrupt practice by the Act of 1873, and that corrupt practice having been committed with the knowledge and consent of the candidate in each case, there was no alternative but to declare the election void and the candidates disqualified. But it is contended on the part of the petitioner that the latter part of this section is general in its terms, and is not to be restricted to the parties aimed at or intended to be referred to in the first part, viz., the keeper of any hotel, tavern or shop in which spirituous or fermented liquors or drinks are ordinarily sold, but extends to any person within the municipality,

and that the penalty imposed is confined to the offence of selling or giving referred to in that portion of the section.

The clause in question, with several others having for their object the preservation of peace and good order at elections, is to be found in the 22nd Vic., cap. 82. That to which this section corresponds was consolidated in the Consolidated Statutes of Canada, cap. 6, as section 81, and read thus: "Every hotel, tavern or shop in which spirituous or fermented liquors or drinks are sold, shall be closed during the two days appointed for polling in the wards or municipalities in which the polls are held, in the same manner as it should be on Sunday during divine service, and no spirituous or fermented liquors or drinks shall be sold or given during the said period, under a penalty of \$100 against the keeper thereof if he neglects to close it, and under a like penalty if he sells or gives any spirituous liquors or drinks, as aforesaid."

So far there would have been no room for doubt, but in re-enacting this section in the Election Law of 1868, the words relating to the period of divine service are omitted; the words "to any person within the municipality" are added after "given," and instead of affixing a distinct penalty upon the keeper for neglecting to close, and another penalty upon him for selling or giving, the clause concludes, "under a penalty of \$100 in every such case." If these words have the effect of extending the penalty to each case of omitting to close a tavern, hotel or shop, as well as to each case of selling or giving, there would be no good reason that a wider signification should be given to them when read in connection with the latter part of the section than the former. The *party liable* to the penalty for *omitting to close* must be the keeper. Why should they be construed as extending to *every person* when read in connection with the remainder of the section? My own view is that the new enactment is in substance the same as the former one. It is impossible to believe that if the Legislature had intended to effect so sweeping a change, they would have left it to be inferred, or as a

question for argument, instead of making it clear by the insertion of a few words. It would be such a mistake that, in the language of Mr. Baron Bramwell, it would be an imputation upon that body to suppose it.

It is true, that for omitting to close the hotels there could be only the one penalty—the offence being complete whether kept open for one hour or for the whole day—whilst each separate sale or gift would, I presume, constitute a separate offence. *Brooke qui tam v. Milliken* (3 T. R. 509).

I can see no good reason for holding that the Legislature intended to confine the penalty to a portion only of the offences enumerated in the 66th section, or for holding, as suggested by Mr. Justice Gwynne, that the whole, viz., the *keeping open and the sale*, should be regarded as but *one* offence, complete only in the event of spirituous liquors being sold or given. In *Newman v. Bendyshe* (10 A. & E. 11), a conviction for keeping open the house, for selling beer, and for suffering the same to be drank and consumed in the house, was held bad, as including three several offences in one conviction, for which the defendant might have been distinctly convicted.

It is said that if it had been intended to limit section 66 to hotel and shop keepers it would have been easy to have so expressed it. To my mind it is so expressed—the first part of the section overriding and being the key to the whole. But if there is any doubt or ambiguity, I have already intimated my opinion that in the construction of statutes it is not to be presumed that the Legislature intended to make any innovation upon the common law further than the case absolutely requires. The law rather infers that our Act does not intend to make any alteration other than what is specified, and beside what has been plainly pronounced; for if the Parliament had had that design, it is naturally said they would have expressed it. It is further argued, however, that the word “give” indicates an intention to extend the Act to other parties beyond the keepers of hotels, but it must be borne

in mind that that word is to be found in the original Act, where the penalty was unquestionably restricted to the keeper of the hotel, &c., and, as Mr. Justice Gwynne suggests in the *Lincoln case* (*ante* p. 391), was probably added to prevent the possibility of the party proceeded against for the penalty evading the statute by setting up as a defence that he did not sell, but gave, the drinks.

But there is an additional reason for concluding that the Legislature did not intend to effect so sweeping a change under a section which purports in its introductory clauses to deal only with hotels and shops where spirituous or fermented liquors are sold. In such a case we may fairly refer to and examine other parts of the Act for the purpose of ascertaining the intent of the legislature. On referring, then, to the 61st section, we find that the candidate, or any other person, is authorized to furnish drink or any other entertainment to any meeting of electors, even on the polling day, at his or their usual place of residence. Here, then, we have a clause in the same statute expressly permitting what another section, in as express terms, prohibits, if the construction contended for by the petitioner be the correct one.

Now that the elections are all held in one day, a literal compliance with the first portion of the 66th section would be impracticable, there being no such exception as is to be found in the English Acts in favor of the reception of travellers, and in the amendment to the Act that has just been introduced, I see that it has been omitted; but whatever may be meant by closing a hotel on the day of polling, it is directed, and the failure to do so is made a distinct offence.

I will refer only to one other matter which confirms me in the opinion that in the construction of this clause we should give no further effect to the words than they clearly and unmistakably bear, which is this: The Legislature, in what is popularly known as the Dunkin Act, has declared that no prohibitory law shall be passed by any municipal council without the consent of the ratepayers,

and, whilst declining to pass such a law themselves, have left it in the power of the ratepayers to make such an enactment. Are we to suppose that they intended inferentially to pass such a law, even for a limited period, when they re-enacted a clause which, when first passed, applied only to hotel and shop keepers selling spirituous and fermented liquors ?

For these reasons I am of opinion that the person, and the only person, liable to the penalties imposed by the Election Law of 1868 is the hotel or shop keeper, or person acting in that capacity ; that he, and he alone, is the person who is guilty of a violation of the Act, by selling or giving liquors, and so liable under the Act of 1873 to the additional penalties imposed by it if within polling hours ; and whilst the investigation of this case has more fully confirmed me in the conviction of the correctness of the decision of the Court, which declared that a violation by the hotel-keeper of this section, with the knowledge and consent of the candidate, avoided the election and entailed the penal consequences affixed by the statute, I am not prepared to hold that the agent of the candidate is guilty of a corrupt practice in treating at a hotel within the prohibited hours. To do so would be in effect to hold that there could be two penalties for the same offence, when the statute has imposed only one.

My conclusion, therefore, is that there has been no violation of the 66th section within the meaning of the Act of 1873.

PATTERSON, J. A.—The grounds of appeal charge as violations of section 66 the giving of liquor to various persons by agents of the candidate during the hours of polling, the persons in each case being treated by the agents at a tavern ; the agents not being the tavern-keepers, but merely casual guests.

In this respect the three charges are precisely alike. The questions peculiar to each case are those touching the facts of the agency and the places where the drinking took place.

It is contended by the appellant that under section 66 the giving of spirituous or fermented liquors *by any person* to any other person during the day appointed for polling is made penal, and, by the Act of 1873, is a corrupt practice. On the other side, it is insisted that the section applies only to those who sell or give in the character of keepers of a hotel, tavern or shop in which spirituous or other fermented liquors or drinks are ordinarily sold. It seems to me that we must either construe the clause literally, and give their full effect to the words "no spirituous or fermented liquors or drinks shall be sold to any person;" or we must read the words with which the clause commences as indicating the class to which the whole clause applies, and read the clause as if worded to the effect that "no keeper of a hotel, tavern or shop in which spirituous or fermented liquors or drinks are ordinarily sold, shall open his hotel, &c., during the day appointed for polling; nor sell or give to any person, &c." This was evidently the effect of the clause as it stood in C. S. Can., cap. 6, sec. 81, where it forms, as it does in the Act of 1868, one of the provisions for "keeping the peace and good order at elections."

It is not difficult to suggest reasons why, as a matter of policy, it may be desirable to extend the prohibition against distributing liquor on polling days beyond the ordinary dealer in liquors. We have, however, to inquire whether that has been done, and if so, whether this extension is in any way limited, or whether it reaches all persons in the municipality without regard to the place where liquor may be given, or the purpose for which it may be required.

The consequences which would follow from holding the restriction to be entirely unlimited have been well pointed out by the learned Judge below, and they are of a character so startling that it is impossible to suppose they could have been in the contemplation of the Legislature. And, besides this, the clause, so construed, would apparently be in conflict with section 61, which allows a candidate to

entertain a meeting of electors at his own house on the polling day.

I believe we are all agreed that this unlimited effect cannot be given to the section ; but the learned Chief Justice, while he construes the prohibition as extending to all persons, considers that the law is only violated when the liquor is sold or given in a hotel, tavern or shop in which liquors are ordinarily sold. I have not been able to see in the clause itself or in the context anything which imposes this limitation. I cannot find room for any middle course. I think these two alternatives only are presented : either the keeper of the house alone is aimed at, or the prohibition applies against all persons and to all places within the municipality.

The true view of the enactment, in my judgment, is that it is simply a re-enactment of the former law, either without modification or with no modification that points to any more extensive operation ; and I think this appears whether we closely examine the clause itself or look elsewhere, as we may do in vain, for indications of an intention to change the law.

All the other clauses in this division of the statute are verbatim re-enactments of the former statute, except that the penalties, while the old amounts are retained, are imposed in terms adopted to avoid any appearance of legislating as to criminal law.

Three changes are made in the section. The first change is the omission of the words which directed that the house should be closed on polling days "in the same manner as it should be on Sunday during divine service"—an omission apparently made because the omitted words were not applicable to any law in Ontario, but which has no bearing on the argument now in hand.

The second is the insertion of the words which I quote in italics in the passage, "and no spirituous or fermented liquors or drinks shall be sold or given *to any person within the limits of such municipality* during the said period."

The clause as it stood was, in its terms, general enough to forbid the selling or giving of liquor anywhere in the municipality; but I have no idea that either the most literal or the most fanciful expounder would have so construed it. Where was the necessity for the words now inserted? To my mind the reason is plain. The whole section as it stood admittedly applied only to keepers of hotels, &c. The danger was that this part of the section might be read as forbidding only selling or giving *in their houses*, but not the dispensing of liquor outside of their four walls. That doubt is set at rest, and the present section is either simply declaratory of the law as it stood, or modifies it only so far as to make evasion of its intention more difficult, without, by force of the insertion of the particular words I am now discussing, otherwise extending its effect.

The third change is in the penal part. It formerly read, "under a penalty of \$100 against the keeper thereof if he neglects to close it, and under a like penalty if he sells or gives any spirituous or fermented liquors or drinks aforesaid." It now reads, "under a penalty of \$100 in every such case." The words themselves appear to be only a statement in a general and comprehensive form of what was before expressed in more detail. The argument, however, is that because "the keeper thereof" is not now mentioned, an intention is shown not to confine the prohibition as it was before. Let us see where this argument leads to. We have to take the section either by itself, or we have to look at it in connection with and as re-enacting the other. Reading it by itself, and taking two provisions separately, we have *first* this enactment: "Every hotel, &c., shall be closed during the day appointed for polling, in the wards or municipalities in which the polls are held . . . under a penalty of \$100." Whose duty does this make it to close the house? I apprehend there would be a serious difficulty in enforcing the penalty for neglecting a statutory duty, unless the statute made it the duty of some particular person. As far as the clause expresses

it, the duty may be intended to be cast upon the owner of the house, or the holder of the license, or the actual manager of the business, or the reeve or constable of the township. The answer, of course, will be that there must be a reasonable construction adopted, and that when it is said that an establishment is to be closed, that is equivalent to saying it shall not be opened, and that the person who could otherwise open it is the person intended. It is not my present object to analyse this contention minutely. It might appear on close reasoning that an enactment that a house shall "be closed" is not equivalent to one that it shall "not be opened" or shall be "kept closed;" and it might not be found so clear that if a servant opened the house in the absence of his master, the master would be liable to the penalty. My object is, in combating the contention that by the omission of the words "against the keeper thereof," the Legislature have relied on a strict construction of the language instead of using an express declaration, to extend to other words an effect which they had not before, to point out that by strictly construing the section, the first part of it would be inoperative, and that if it could be made operative at all, it would be by applying to it a rule of construction depending partly on presumption, and liable to lead to a wrong conclusion.

We get rid of all the difficulty by looking first at the law as it was, where we find there was no room for doubt. We then inquire, has the law been changed? and we find that the Province of Ontario having become separated from Quebec, its Legislature having found it necessary or desirable to re-enact the law relating to elections, did re-enact it, making such changes as the changed constitution required; but indicating no intention to change the law except where that is done in express terms, as, *e. g.*, in adopting the law then in force in England. The passage of the Act in itself does not, under the circumstances, imply an intention to change the law, or to do more than to adapt it to the changed political circumstances of the country. No obstacle exists to prevent the section in

question being regarded as meant to be and as being a re-enactment, with only such modifications as I have noticed. When we refer for explanation to the law as it was, we find no difficulty in reading the words, "under a penalty in every such case," as the same in effect as "under a penalty against the keeper thereof, if he neglects to close it, and under a like penalty if he sells or gives."

We have either to take the new section by itself, when we find that one half of it is inoperative, or if operative at all, is only so by some nicety of construction which can never be other than doubtful, or we have to take it as a re-enactment of the old law, when the whole is operative.

I do not think the word "given" as it occurs in the phrase "sold or given" adds much weight to the contention for the more extended construction, as to have prohibited selling only would have been to invite evasion by almost suggesting that the tavern-keeper should distribute the liquor on the pretence of giving it.

I have already said that while satisfied that the section cannot be read as forbidding the giving of the liquor *by any one*, without restriction as to place or purpose, I am not able to perceive any ground, satisfactory to myself, for holding that the restriction may extend to persons, other than the keeper of the house or person acting in that capacity, who give liquor in the house itself, when it would not touch them if they gave it elsewhere in the municipality, as in the charges now before us, which are ordinary cases of treating, the person charged as giving did so merely by buying from the bar-keeper, and then by his own hand or the hand of the bar-keeper giving it to others.

We should have to impute to the Legislature the intention to convey by the one expression two separate mandates, one of which pre-supposes disobedience to the other. As far as it affects the tavern-keeper, the enactment is that he is neither to open his house nor to sell or give liquor on the polling day. If he obeys this command, no other person can possibly give, on that day, any of

the tavern-keeper's liquors. He is to retain his whole stock safely in his own possession. It would seem a faulty rule of construction on which we should hold that the Legislature, in contemplation of the tavern-keeper disobeying the law by parting with liquor, meant to provide against such disobedience by the further command that if he did so disobey, the recipient of the liquor must not give it away again under a penalty, and particularly as no penalty is attached to the act of receiving it. If such an intention existed it should and doubtless would have been somewhat more clearly expressed.

The only other case in which it can be suggested that *giving* at a tavern, etc., is the act intended, is the case of persons bringing liquor from elsewhere to the tavern and giving it away. This is too remote a possibility to require more than a bare mention, and no good reason can be suggested why a giving of that nature should not be an offence wherever committed, as well as when committed in a tavern or place where liquor is ordinarily sold.

In my view, therefore, the agents, Thomas, Clark and Gibbs, did not violate sec. 66 by treating at taverns on the polling day,

The same remark applies to a personal charge against the candidate for treating at Ray's tavern, which seems to have been urged below, but which was not renewed before us as one of the grounds of appeal.

It is not necessary for the disposal of the case to dispose of the other questions discussed in the judgment before us, but on two of those questions it is proper that we should express our opinion.

[The learned Judge then referred to the agency of Thomas, and agreed with the later opinion of Mr. Justice Wilson, that he was an agent. He then proceeded:]

The other question relates to sec. 66 of the Act of 1868. One Clark, an agent of the candidate, had treated one Jordan, a voter whose polling place was in Whitby, at a tavern in Oshawa, during the hours of polling. The learned Judge held that this was not an illegal act within

sec. 66, "because the liquor was not given by Clark to Jordan within the limits of the municipality where the poll of the town of Whitby was held."

I think this is a mistaken view of the section, and that the mistake has arisen from regarding the prohibition as aimed at the treating of *voters*; and with that idea, reading the words "municipalities in which the polls are held" as meaning the municipalities in which are held the polls at which *the voters who are treated* are entitled to vote. I think it is quite plain, not only that the object of the enactment, viz., to preserve peace and good order at elections, would be very inefficiently attained if open house might be kept for all who were not voters of the particular ward or municipality, but that nothing in the section points to that construction. An election is proceeding for the riding: Whitby and Oshawa are two separate municipalities in the riding, and in each a poll is held during the same hours. A *tavern-keeper* who sells or gives liquor in either municipality is plainly violating sec., 66, whether he gives it to voters of that municipality or to voters of the other municipality, or to persons who are not voters. The prohibition is against selling or giving within the limits of a municipality in which a poll is being held, without any regard to the persons to whom the liquor is sold or given. The decision in Clark's case is therefore upheld—not upon the ground on which the learned Judge rested it, but upon the other ground which I have discussed, viz., that the corrupt act was committed, not by Clark, but by the person who sold him the liquor.

The appeal should be dismissed with costs.

Moss, J. A.—The learned Judge below, upon a review of the evidence and an examination of the authorities, held, although with much hesitation, that neither Thomas nor Gibbs was an agent by whose treating in taverns the respondent could be affected; but he was manifestly of opinion that if the agency had been established, their conduct in giving treats, although not shown to be for

the purpose of influencing votes, would have avoided the election. On further consideration he seems to have inclined to the view that agency had been established in the case of Thomas; and I must say that that appears to me to be the proper conclusion from the evidence. In the case of Clark he decided that agency had been proved, but he thought that his treating was not a corrupt practice within the meaning of section 66, for reasons to which I shall refer presently. But it is broadly argued by the learned counsel for the respondent that, even assuming these persons to have been agents, there was no corrupt practice, because section 66 of the Act of 1868 is only intended to deal with the keepers of hotels, taverns and shops in which spirituous or fermented liquors are ordinarily sold, and to prohibit the selling or giving of liquor by persons answering that description. If that be the true interpretation of the section, it becomes immaterial to discuss the evidence of agency. On the other hand, it is contended by the counsel for the appellant that the section is divisible; that while the first part relates to keepers of taverns, &c., alone, the second extends to and renders penal the giving of liquor by any person to any person in the electoral division during polling day; and that consequently, if given by an agent of the candidate during the polling hours, the election is avoided by force of sections 1 and 3 of the Act of 1873 (36 Vic., cap. 2).

The words used are certainly of extreme generality. Read literally they are sufficient to support the appellant's contention. But there are numerous cases in which language quite as wide and terms quite as general have been restricted by a consideration of the previous state of the law, the express object of the statute, and other circumstances which the Courts have held fitting to be regarded in arriving at the intent of the Legislature. [The learned Judge here cited and reviewed the following authorities: *Hawkins v. Gathercole* (6 D. McN. & G. 1); *Lord Auckland v. Westminster Local Board of Works* (L. R. 7 Chy. 597); *Sedgwick on Statutory and Constitutional Law*, 234].

These references are authority sufficient, not only for the proposition that we should regard the terms of the enactment for which section 66 was substituted, but that we should presume that the Legislature only intended to change the law to the extent that it has clearly and positively expressed. The 66th section of the statute of 1868 was substituted for the 81st section of the Consolidated Statutes of Canada, cap. 6. In each statute the section forms one of a group collected under the heading of "keeping the peace and good order at elections." Some doubt has been expressed whether it is allowable to refer to this heading upon a question of the proper construction of one of the sections coming under it. It seems to me that it can be taken into account for the purpose of determining the immediate and special object which the Legislature had in view while passing these sections, and there is no doubt that the nature of this object may have an important bearing upon the interpretation to be given to language of a general character. In *Bryan v. Child* (5 Ex. 368), Pollock, C. B., refers to the mode then "recently introduced in statutes, namely, by having certain clauses connected by a sort of preamble to each separate class of clauses, which preamble may really operate as part of the statute:" and he decides that such preamble must be read in order to ascertain the meaning of the Legislature. The so-called preamble was this: "And with respect to transactions with the bankrupt, &c., be it enacted." Our statute may fairly be read as if expressed thus: "For the purpose of keeping the peace and good order at elections, be it enacted," &c. In *Robinson v. Collingwood* (17 C. B. N. S. 777), the word "trusts," used without any limitation in a statute, was construed in the light of the preamble to mean "trusts in favor of the grantor."

It appears, then, that the object which the Legislature had in view when it passed the sections in the Consolidated Statute was the maintenance of peace and good order; and that the object was still the same when the corresponding sections of the statute of 1868 were enacted.

According to the principles of construction to which I have referred, we ought not to assume that the Legislature, which in the associate clauses was re-enacting the former statute, contemplated such a wide extension of the law as is contended for by the appellant, unless it has used language clearly expressing that purpose. How wide that extension would be is manifest from an examination of the 81st section. There is no room for doubt as to the description of persons who were affected by its provisions. It enacts that every hotel shall be closed, and no spirituous or fermented liquors shall be sold or given during the said period, under a penalty of \$100 against the keeper thereof, if he neglects to close it, and under a like penalty if *he* sells or gives liquor. This language is free from all ambiguity. The persons subjected to a penalty for giving or selling liquor are the keepers of the houses directed to be kept closed. In the statute of 1868 the phraseology is—except in some particulars immaterial to the present argument—precisely the same until the part relating to the penalty is reached. The injunction to keep closed and the prohibition against such a gift are expressed in the same terms in both statutes. If, then, the later statute, passed with the same object as the earlier, and coinciding with it in the corresponding sections directed to this object, is to be extended from the comparatively narrow circle of keepers of such houses to the general body of the public, it is simply because in the part of the section relating to the penalty there is no definition of the persons who are rendered liable. I entertain little doubt that the draftsman who penned the 66th section thought that in substituting the words, “under a penalty of \$100 in every such case,” for the definite language of the 81st section, he was expressing the same thing in a more concise form. It may be that in aiming at a little originality by this consideration, he has fallen into obscurity; but such things have been known to occur in Acts prepared by skilful and experienced hands.

Regarding the 66th section as it stands, it is necessary to supply by construction the designation of persons whose duty it is to close the houses. The reasonable construction is that these persons are the keepers of the houses. If the words "by the keeper of such house" must be introduced into the first clause of the section, it appears to me that they should equally be introduced into the second clause. For my own part, I prefer that construction to one that virtually seeks to introduce into the same clause the words "by any person." The inconveniences of such a construction, some of which have been graphically described by the learned Judge below, are in themselves sufficient to induce the Court to pause before adopting it.

I do not repeat the other constructions which have been presented by my brothers Burton and Patterson, in confirmation of this view, but content myself with saying that if this be the correct view to take of the section, it follows that it is only violated by the giving of liquor; when the giver is a keeper of one of the houses directed to be closed; and that no agent of the candidate will, by giving liquor to any person within the prohibited hours, be guilty of a corrupt practice avoiding the election, unless he is the keeper of such a house.

I only desire to add that I entirely concur in the remarks of my brother Patterson upon Clark's case. If his treating Jordan at Whitby, where Jordan was entitled to vote and did vote, would have avoided the election, that would have been the result of the treat he actually gave him at Oshawa. The offence does not depend upon the character of the person treated. It does not matter whether he is or is not entitled to vote at any particular place, or whether he is entitled to vote at all.

In my opinion the appeal should be dismissed with costs.

Appeal dismissed with costs. (a)

(a) No report of this case was sent to the Speaker.

MUSKOKA.

BEFORE MR. JUSTICE WILSON.

BRACEBRIDGE, 20th to 23rd July, and 17th September, 1875.

BEFORE THE COURT OF APPEAL.

TORONTO, 16th December, 1875, and 22nd January, 1876.

ANDREW STARRATT, *Petitioner*, v. JOHN C. MILLER,
Respondent.*Corrupt practice—Each charge a separate indictment—Cumulative evidence—General promise by ministerial candidate—Bribery or undue influence—32 Vic., c. 21, s. 72.*

The respondent was charged with several acts of corrupt practice. Each separate charge was supported by the evidence of one witness, and was denied or explained by the respondent. The learned Judge trying the petition held, that if each case stood by itself, oath against oath, and each witness equally credible, and their being no collateral circumstances either way, he would have found that each case was not proved; but as each charge was proved by a credible witness, the united weight of their testimony overcame the effect of the respondent's denial; and on the combined testimony of all the witnesses, he held the separate charges proved against the respondent.

Held by the Court of Appeal (reversing *Wilson*, J.), that in election cases, each charge constitutes in effect a separate indictment, and if a Judge on the evidence in one case dismisses the charge, the respondent cannot be placed in a worse position because a number of charges are advanced, in each of which the Judge arrives at a similar conclusion, and therefore the separate charges above referred to were held not sustained.

The respondent stated at a public meeting of the electors with reference to an alleged local grievance, that he understood it to be the constitutional practice, here and in England, for the Ministry to dispense as far as practicable the patronage of the constituency on the recommendation of the person who contested the constituency on the Government side; and that he, being a supporter of the Government, would have the patronage in respect to appropriations and appointments whether elected or not.

Held, 1. That the respondent by such words did not offer or promise directly or indirectly any place or employment, or a promise to procure place or employment, to or for any voter, or any other person to induce such voter to vote, or refrain from voting.

2. (reversing *Wilson*, J.) That the respondent was not guilty of undue influence as defined by s. 72 of the Election Law of 1868, nor as recognized by the common law of the Parliament of England.

3. That to sustain such a general charge of undue influence, it would be necessary to prove that the intimidation was so general and extensive in its operations that the freedom of election had ceased in consequence.

The petition contained the usual charges of corrupt practices.

Mr. M. C. Cameron, Q.C., and Mr. Evatt for petitioner.

Mr. D'Alton McCarthy, Q.C., and Mr. Bethune for respondent.

The cases disposed of by the learned Judge are set out in his judgment.

WILSON, J.—The case was very fully argued by the counsel for the respective parties. It will not be necessary to refer to any other of the charges than those now standing for judgment.

The first of the cases relied upon by the petitioner is that which is called the Hill case. The charge as to this case is that the respondent promised and guaranteed the said Hill that, through the respondent's influence, he should never be called upon to pay certain timber dues, if the said Hill would support and vote for the respondent. [The learned Judge then reviewed the evidence of Hill and of the respondent, and proceeded:] There is a very plain and direct contradiction between the two accounts of these two witnesses. The fact whether Hill or the respondent first spoke of the dues so claimed by the Government may not be material. It does not appear to be of much consequence who first introduced that subject, or at what part of the conversation it was introduced. The main question is, was it, whoever introduced by, or at whatever stage of the conversation it was introduced, held out in any form by Miller to Hill as a promise or endeavor to procure any money or valuable consideration in order to induce Hill to vote or refrain from voting? According to Hill's evidence it manifestly was; according to the respondent's evidence it certainly was not. There is no other person who can speak as to the conversation. The counsel for the petitioner argued that the fact of the claim having been made by the Government on the firm of which Hill was a member was somewhat extraordinary, if it were one which was never intended to have been enforced; and that Hill's evidence was very direct and reliable as to the fact of such claim.

For the respondent it was argued that Hill in the former sworn statement had said Miller first asked him how he was going to vote, while, in the present examination, he said that Miller first spoke to him of the dues, and that the fact of the petitioner or his friends having taken a written statement was to bind Hill to adhere to it, which showed they could not fully depend upon him. I formed no unfavorable opinion of the witness, or the manner of his giving his evidence; I must act upon his testimony if I believe it to be true, and if I think it has not been answered or rebutted by the evidence of the respondent. The respondent is unquestionably, on the face of the inquiry, an interested witness, but there was nothing in the evidence he gave, nor in his manner of giving it, which could or did excite any suspicion whatever against his perfect truthfulness. Hill, the witness, did show he had some feeling or bias against the respondent, for he said he thought the statement in writing which he made against the respondent would operate adversely to him.

If this were the only charge, and it rested only upon the evidence of Hill in support of it and that of Miller against it, I should, without disbelieving either witness, hold that as there was as much evidence against the charge as there was for it, it must be considered to have failed. It is the fact that because both witnesses are believed the case must be held to have fallen through. If one were believed and the other were not, or if more credit were given to the one than to the other, the decision would be given on a different ground. The respondent, in a case of even and fully counterbalanced testimony, is entitled to the presumption of innocence in his favor. The question is, whether the evidence can, on this record, be said to be equally balanced, so as to give him the right and benefit of all just presumptions of law and of fact? That will depend upon the other charges which are still to be considered; for if in the other cases I find that they are respectively balanced by the evidence of the respondent, the same witness in all of them as against

several witnesses—one, however, only in each case—I should then feel obliged to rely more upon the impartiality and truth of the greater number who testified against the respondent, and whose evidence and characters were respectively, for reliability and veracity, as much to be depended upon as were those of the respondent. I have already stated my opinion on this point in the matter of the *North Renfrew case (a)*, in which also I acted upon it.

I shall state the conclusion I have come to on this charge when I have gone over the other charges before mentioned. I shall pass by for the present the charge respecting the speech of the respondent at Matthias' Hall, and take up the charge relating to Sufferin's case, in which the respondent is charged with offering, that if Sufferin would support him, he, the respondent, would get him the laying out of \$3,000 on the Parry Sound Road.

The respondent's counsel contended that it was absurd to suppose the respondent would, in the short space of two or three minutes, in a hurried interview, make a corrupt promise to a man who had already pledged his support to the respondent. There is no doubt it was not a long conversation which took place between them, but they both agree that there was mention made of Sufferin being about to run for reeve, and about the expenditure of the \$3,000 being made. The parties differ in these respects: Sufferin says the respondent applied to him to give his support, and that the respondent said he heard Sufferin was going to run for reeve, and that he wished Sufferin to go in for it and to support him, and that he (the respondent) would get Sufferin the laying out of the \$3,000, and that Sufferin said it was all right, he would support him.

The respondent says he asked Sufferin how the matter was, who said that the respondent would have the majority in the township; that he, Sufferin, said he was

(a) Reported Dominion Elections, 1874, *post*.

going to run for reeve, and he hoped as reeve that respondent would see that the Council had the laying out of the \$3,000, and that the respondent said Sufferin's claim would have to be considered at the proper time.

The chief differences are that Sufferin says the respondent said he wanted Sufferin to support him, and he would get Sufferin the laying out of the money, and Sufferin said it was all right, he would support him; while the respondent says it was Sufferin who said he hoped as reeve the respondent would see the Council had the laying out of the money.

The statement of Sufferin is distinctly coupled with the exercise of his right of voting; the statement of the respondent is in no way connected with it. The statement of Sufferin shows a promise by the respondent; the statement of the respondent shows a hope only expressed by Sufferin. The statement by Sufferin shows a personal inducement held out by the respondent to Sufferin for his support; the statement of the respondent shows a mere hope expressed by Sufferin that the Council would get whatever advantage there was in laying out the appropriation, but at the same time they would have that as distinct from the election. The one statement is a corrupt offer or promise by the candidate of personal gain to the elector, in consideration of support at the election being given; the other statement is a mere hope dis-severed from the election, expressed by the voter to the candidate, that the respondent would see the Council were allowed to appropriate the money.

And the question is, "Which account of the conversation should I accept?"

If this stood by itself, as before stated, oath against oath, and each side equally credible, and no collateral or accompanying circumstances to aid me either way, I should hold the charge not to be proved. But the other charges, if severally sworn to by a credible witness, and the united weight of their testimony is to overcome the effect of the respondent's unsupported word, I may be

obliged to attach such a degree of importance to the combined testimony of these witnesses, as to hold the charges to which they severally speak as sufficiently proved in law, against the opposing testimony of the respondent. I shall, before forming any opinion on this part of the case, consider the other remaining charge of the like general character, resting on the evidence, also of one witness on each side, which is contained in the next charge relating to Barker's case; the witness for the respondent being the respondent himself as in the two preceding cases.

[The learned Judge reviewed the evidence in the charge referred to, and decided it was not proved.]

The remaining charge is the one relating to the respondent's speech at Matthias' Hall, in the township of Draper, and as it is a peculiar and a very important one, I shall have to get the language used as accurately as I can.

I must make out, in the first place, what Miller really said, as well as I can extract it from the accounts of what he said.

His own statement, especially when it is adverse to him, may be accepted as a genuine account of his language. The respondent says he used the words following: "I was the recognized ministerial candidate, having been nominated by the Reform party. That I understood it to be the constitutional practice here, and in England, for the Ministry to dispense, as far as reasonable and practicable, the patronage of the constituency on the recommendation of the individual who had contested the constituency in favor of the Government." He said, "I did not state I would have the patronage whether elected or not. I said I understood the constant practice was, or, as above stated, I said the patronage would be in me, and I would redress the grievance complained of, if elected." The respondent, although not now in words, in effect shows he did say or gave those at the meeting to understand that he would have, as the Government or ministerial candidate, the influence or patronage of the Government in the district whether he was elected or not, because, he says, he told

them he understood the practice was "that the Ministry should dispense the patronage of the constituency on the recommendation of the individual who had contested it in favor of the Government"—not on the recommendation of the person who had contested the constituency in favor of the Government, if that person were successful at the election, or were elected, or, in other words, on recommendation of the member if he were a Government supporter, but on the recommendation of the person who *contested* the constituency on the Government side, or, in other words, whether he was successful or not.

Dill, one of the respondent's witnesses, says: "To a certain extent Miller said, as I understood him, that, being the supporter of the Government, he would have the patronage whether he was elected or not." Meyers, also one of the witnesses, says: "His speech was that, as he was the Government candidate, it was the interest of the people to support him whether he was elected or not; that he would have the patronage and Mr. Long would not—he was not the Government candidate."

Assuming, then, that the respondent did use such language and on the occasion spoken of, is it an offence within the Election Law, or is it an act or the exercise of undue influence, "recognized by the common law of the Parliament of England," according to the 36 Vic., c. 2, s. 1? Is such language an offer or promise, directly or indirectly, of any place or employment, or a promise to procure, or endeavor to procure, any place or employment to or for any voter, or any other person, in order to induce such voter to vote or refrain from voting? The language was, in effect, "I am the Government candidate, and, because I am so, I shall have the patronage and influence of the Government as to appointments and in the laying out of money appropriations in the district roads, and in the appointment of overseers for such works, and I shall have such patronage and influence whether I am elected or not, and I shall take care that no outside persons, but residents only of the district, receive such appointments." I think

it is not an offer or promise of any place or employment, or a promise to procure, or to endeavor to procure, any place or employment to or for any voter or other person. I think it is not so, because the number of overseers in the district would be comparatively small for the expenditure to be made there, and the promise, if one were made, was not exclusively addressed to those present at Matthias' Hall, but to the whole constituency. If the respondent had said the district was about to be formed into a county, and a sheriff would have to be appointed at once, and he would have the disposal of that office, and he would see that a resident of the district would get it, I think it could not properly be said that the respondent had offered or promised a place or employment, or had promised to procure, or had endeavored to procure, a place or employment to or for any one within the meaning of that section of the Act.

The expectation that each one of the constituency would form or might form on such language, would be of the vaguest and most indefinite kind. But if the respondent had said that 100 or 500 men would be required for a particular work at good wages and for a good while, and he would have the selection of them, and he would take care they were taken from the district, and that no outsiders should be employed, and that he would have that patronage whether he was elected or not, I am disposed to think that such a case might be brought within the operation of that section of the statute. For although there was nothing addressed to any particular 100 or 500, and the persons to be selected could not then be known, yet the great number who were to be employed would afford some ground for each person supposing he might be one of so numerous a body; and in that way, although the offer or promise were not made to any defined body or number of persons, it being made to such a body that it might naturally operate practically in advantaging a very great number of people, and raise an expectation that the promise so made would be or might

be fulfilled to each one in his own case. A promise to two to employ one, not naming which one, would, in my opinion, be within the Act; a promise to one thousand to employ one of them would, in my opinion, not be within the Act. In this district there were at least 1,400 voters polled. Those capable of being overseers, or who might probably look for or take the office, I only conjecture. Perhaps there were several hundred, and as the expenditure was not very large (I am not sure whether it was named or not), the number of overseers would not be very numerous. The data are not given to me to enable me to state them accurately; but I have no reason to believe that, acting upon the rule which I have stated, the exact facts, if I knew them, would establish a case within the provision of the Act of an offer or promise of any kind, respecting place or employment, which could possibly be called an offer or promise, having been made contrary to that enactment by the respondent. If it is a violation of the Act, or of the common law of the Parliament of England, it must be by reason of its amounting to undue influence by the respondent.

The 72nd section of the Act defines what is undue influence under that Act: "Every person who shall directly or indirectly, by himself or by any other person on his behalf, make use of, or threaten to make use of, any force, violence or restraint, or inflict, or threaten the infliction by himself or by or through any other person, of any injury, damage, harm or loss, or in any manner practise intimidation upon or against any person, in order to induce or compel such person to vote or refrain from voting, &c., shall be deemed to have committed the offence of undue influence, and shall incur the penalty of £200."

Can the case be brought within the terms just quoted of that section? If it can it must be by the following words: "Every person who shall directly or indirectly . . . make use of . . . any restraint . . . or in any manner practise intimidation upon or against any person in order to induce or compel such person to vote or refrain

from voting . . shall be deemed to have committed the offence of undue influence." The word *restrained* is used, it will be seen, in connection with *force or violence*, and so may be said to mean some physical restraint. But *menace* has been held not to be confined to indicating only bodily injury. The apprehension of being excluded from the sacraments of the church, and the menace of eternal punishment, might be far more powerful than any threat of corporal punishment. *County of Dublin case, 1827* (Espinasse 57, *note*). So *restraint* does not mean only corporal confinement or the fear of bodily harm. Taking away the will of the person by threats or by improper means of any kind not willingly assented to by the person, but brought about by the exercise of authority or by fear, or apprehension of loss of any kind, must be a restraint. It is said to be, to keep from action by any means ; to hold back ; to hold on ; to curb, check, repress, coerce, constrain, debar, prevent, abridge, hinder. "I have promised to *restrain* him hurting any man's reputation."—Addison. Constraint (Worcester's Dictionary) respects the movements of the body only ; restraint, those of the mind and the outward actions. The conduct is restrained by particular motives. Restraint is an act of power ; restrict is an act of authority. "The will or the actions of the child are restrained by the parents."—Crabbe's Synonyms. I refer to the leading case of *Huguenin v. Baseley* (2 White & Tudor's L. C. 462) for a very full and admirable exposition of what is undue influence, and the variety of ways in which it may be exercised. I think language may be addressed to a body of electors which, by a particular person, may constitute a restraint upon the free action of the electors.

Now, what I have to determine is, whether the language in question can be held to have been a *restraint* upon or against any person in order to induce or compel such person to vote or refrain from voting ; or whether it can be said the respondent, by his language, in any manner practised intimidation upon or against any person for the

like purpose; or whether it can be said to be an act or the exercise of undue influence recognized by the common law of the Parliament of England, within the meaning of the statute. Too much strictness must not be imposed upon election speeches. It is said "a hustings's speech has become almost a proverb for insincerity."—Freeman's Federal Government, p. 83. But that will not sanction anything being said without any check or restraint.

When the respondent made the declaration he did, which is the subject of this charge, what was its nature, purpose and import? It was to show the electors that, under any circumstances, he, the respondent, would have the influence and patronage of the Government in the electoral district, and that he would distribute them among the residents; and that under no circumstances would his opponent have any such favor or influence. The effect of that was to draw votes to himself and to withdraw them or keep them from his opponent; and it is a fair conclusion that the respondent intended to bring about such a result, for it is the natural tendency of the language which he used.

I think that is not a fair or warrantable course of argument to take; it does interfere with the free deliberation and choice of the electors of their candidates. It is made hopeless to struggle against the influence and patronage of the Crown so to be exercised, and useless to vote for a candidate who is in no case to have any voice or influence in such matters in the constituency. Whether such language will operate upon a large body of the electors, or upon what precise number it will operate, is not so much the question. It will undoubtedly operate upon some of them, especially in this district, a newly settled, sparsely peopled, and what may be called a poor settlement; poor because newly settled, and because the labors of the people are turned to the clearing of their land and the establishment of a home for their families. They have not received and are not receiving the return as yet of their labor. Their effort is until they can make their land remunerative; and it was designed to operate upon them prejudicially

and unduly as affecting their choice of a candidate; for, of course, the candidate in dispensing his favors will prefer those who supported him to those who opposed him. I don't place any stress upon the respondent calling himself the Government candidate or the ministerial candidate; it is the common mode of speaking; all that is meant by it is, that he is the person that the party which supports the Ministry has selected as its candidate. No one thinks that the Government or Ministry has actually selected a candidate and put him forward as its nominee in the contest. I do not think either that the respondent saying that it was the custom, and by parliamentary practice he would have the influence and patronage whether he was elected or not, alters the character or the force or effect of the language.

It is the fact that the Minister in his department has the patronage of it, and that the contractor has the choice of his workmen. And it would not lessen the objection of their holding out what they could do, and what they meant to do in the district, and how they meant to spend their money and distribute their patronage among the electors, by telling them at the same time that they had the right and power, and it was the practice to act on these matters as they pleased—the Minister by custom of parliamentary practice, and the contractor because he may do as he pleases with his own.

I put out of consideration all those arguments addressed to the electors by the candidates, the one saying he is in favor of a new road, or a canal, or a railway, or some other object, and his opponent is not, and that he, the speaker, will press the performance of that work, and it will be a great advantage for the people of the constituency; because it is one of the duties of a representative to attend to matters of that kind, and he may as freely speak in that manner on such subjects as he may speak on changes in the school law, or on the tariff, or on any other matter not so peculiarly affecting the constituency. There is a difference between such a line of argument and the

candidate saying he will have the patronage and influence of the Government in all the work and expenditure to be done or to be made in the constituency, and that he will have them whether he is elected or not, and that he will see that no outsiders participate in these benefits, even although he should add that he would have that power and patronage according to the custom of the parliamentary practice in such cases. I consider that, fairly interpreted, to be the exercise of undue influence, not of Government influence, but of influence in the name of the Government by the respondent, and if it be not that, or do not mean that, it means nothing. But I have no doubt it was meant for a purpose, and that purpose could only have been, and in his case it was, I think, unduly to influence the electors in their free choice and deliberate judgment of a candidate.

The conclusion I come to in reference to this charge is that I think the respondent did make use of restraint or practise intimidation upon the occasion in question upon or against the electors present at the meeting at Matthias' Hall, and perhaps upon or against those who were not present, in order to induce or compel such persons to vote, or refrain from voting, at that election. Or if the case do not come within that section of the statute, I am of opinion it must be undue influence according to the common law of the Parliament of England. New modes of undue influence must or may be practised from time to time which may not be covered by the written law, but the principle of the law itself, written or unwritten, is that every election must be *free* (2 Co. Inst. 169; W. & M., sess. 2, c. 2, secs. 1, 2; 2 W. & M., sess. 1, c. 7); that the electors must be allowed freely and indifferently to exercise their franchise; and it is for that cause an election is vacated by riot or other serious disturbance, or by general drunkenness, or by general bribery, although neither the sitting member nor any one for him had anything to do with such acts: *Lichfield case* (1 O'M. & H. 22); *Bradford case* (1 O'M. & H. 30); *Beverley case* (1 O'M. & H. 143); *Staf-*

ford case (1 O'M. & H. 228); *Tamworth case* (1 O'M. & H. 75). However varied or novel the acts or conduct of these may be who proceed in such a manner as to violate the freedom of the election, can make no difference in the law. If the law itself be broken, if the whole election be rendered in any manner or by any persons not free, the result must be that it will be vacated as a void election. If the whole election be not so affected, but the sitting member or any of his agents is or are chargeable with certain acts of the violation of such freedom, the return of the election of that candidate will be avoided.

But if the candidate is no way chargeable with any individual case of violating the principle of a free election, his seat will not be affected; the vote or votes which may be affected by it will be deemed to be illegal. There is a resolution of the Commons of December, 1779 (37 Commons' Journal, 507), against the interference in elections by Ministers of the Crown: "That it is highly criminal in any Minister or Ministers or other servants under the Crown of Great Britain, directly or indirectly, to use the powers of office in the election of representatives to serve in Parliament, and an attempt at such influence will at all times be resented by this House as aimed at its own honor, dignity, and independence, as an infringement of the dearest rights of every subject throughout the empire, and tending to sap the basis of this free and happy constitution."—Rogers on Elections, 9th ed., p. 370. In Chambers' Election Law, p. 374, it is said the interference of Ministers was made a principal ground of avoiding the election in the *Dublin case*, 1831. That case I have not seen. The only one I have seen where a charge was made against the interference of Ministers of the Crown, is the *Dover case* (Wolf. & Br. 121).

If it is highly criminal in a Minister of the Crown to use the powers of office in electoral contests, it must be objectionable for a candidate to assert that he has and will have those powers, although he is not in office, because he is the Government or ministerial candidate, whatever may

be the result of the election. The powers of office are not to be used in the contest, and whether they are used by a Minister, or a friend, ally or supporter of the Minister, must be alike vicious and objectionable. Of course, in all of these cases I am assuming that such a course of proceeding is adopted with the intent mainly to influence the election: for, as I have already said, the intent is everything in such a case. These powers of office are the patronage and influence which that office confers. The exercise of that patronage and influence by delegation to a ministerial supporter is quite as effectual to operate perniciously on the freedom of elections as if the powers were exercised by the principal himself. I see no difference between the Minister saying to the electors in an electoral district in which there are Crown lands to be valued for the settlers, "I have the power and patronage of the valuation of all your lands," or, "I will have the valuation of them," if said with the intent unduly to influence the election in which he is a candidate or the supporter of a candidate, and another person (not a Minister, but the friend and supporter) saying the same thing by reason of his being such supporter and of his contesting the constituency in favor of the Government, if such person say it with the like intent; and the same thing applies to language of the like kind addressed to lumbermen with respect to lumber dues in their imposition, remission or otherwise, and to the expenditure of Government appropriations in the opening of roads, or in the performance of other public works.

I am obliged to find this charge has been sustained.

I must now dispose of the other charges, relating to the alleged remission of timber dues to W. J. Hill, and to the appropriation by Sufferin of the road money in his township. These charges depend not so much on the credibility as upon the weight of testimony, and I am now disposed to adopt the case of the petitioner with respect to them, partly because of the weight of testimony by their united force, and partly because they are to some

extent of a like nature with the last charge, resting upon the influence, or upon the alleged interest and influence, of the respondent with the Government or Ministry of the day, which it is not improbable the respondent used as an argument on these occasions, as it is said he did, and as he unquestionably did on the occasion which is the subject of the last charge. I should have been glad to have been spared from pronouncing any opinion on the other two charges. And I am not sure I should have found as I have upon them but for the conclusion to which I have come with respect to the last charge. The evidence would have warranted me in one view in finding adversely to the respondent upon them, but not necessarily so.

Upon the whole, with much concern and with an earnest desire to decide fairly between the parties, I must find these charges above enumerated to have been proved by the petitioner against the respondent. And I direct that the cost shall abide the result of my finding upon the said petition.

I have retained this judgment for a considerable time in order to advise with some of the Judges upon a point which has not before arisen here. I am bound to say that some of the learned Judges I have consulted do not agree with me. I have not been able to adopt their opinions. It has also been a question with me, and that too has been discussed, whether, as I desired advice, which indicated to some extent a doubt in my own mind, I should not give effect to that doubt by deciding for the respondent, and particularly in a case which is attended with such highly penal consequences. I have not been able to adopt that view, because I do not entertain such a degree of doubt as would warrant me in adopting that course. I should gladly have done so if I could have done it from conviction. But I have not that conviction, and I cannot force myself to it from the opinions of others, however highly I may prize their advice and judgment. I must, after all, act on my own responsibility and judgment. The consequences resulting from an adverse judgment to the re-

spondent I cannot help thinking of; but they are not my work; I am not answerable for them. That is the declaration of the written law, which is above my power. I have now only to say I desire most sincerely that this case will be appealed to another tribunal, and I for one shall in no way regret if the conclusion I have felt obliged to come to should not be the opinion of the higher Court.

The respondent thereupon appealed to the Court of Appeal.

Mr. D'Alton McCarthy, Q.C., and Mr. Bethune for appellant (respondent in the petition).

Mr. M. C. Cameron, Q.C., and Mr. Boulton for respondent (petitioner).

DRAPER, C. J. A.—I agree in the conclusion arrived at by my brother Burton, that the appeal should be allowed and the petition dismissed.

But a principle as to the law of evidence was laid down in the *North Renfrew case*, which was referred to and acted upon in the present case, with regard to which I entertain some doubts; and I do not wish, by passing it over in silence, to be supposed to concur in it, or to have been influenced by it in being a party to the judgment now given. I am not deciding one way or the other.

It has been distinctly enough held that on a petition charging any corrupt practice, the respondent is, in a case of even and fully counterbalanced testimony, entitled to the presumption of innocency to turn the scale in his favor. Now the question presented in the present case is, whether the evidence can be said to be so equally balanced as to render it necessary for this respondent to invoke the aid of that presumption, or, on the other hand, to entitle him to it. It is put in the judgment in the following shape: "The question is, whether the evidence can, on this record, be said to be equally balanced, so as to give him the right and benefit of all just presumptions of law and fact. That will depend upon the other charges which are still

to be considered; for if in the other cases I find that they are respectively balanced by the evidence of the respondent, the same witness in all of them as against several witnesses—one, however, only in each case—I should then feel obliged to rely more on the impartiality and truth of the greater number who testified against the respondent, and whose evidence and characters were respectively, for reliability and veracity, as much to be depended on as those of the respondent. I have already stated my opinion on this point in the *North Renfrew case*."

In another part of the same judgment it is said: "If this stood by itself, as before stated, oath against oath, and each side equally credible, and no collateral or accompanying circumstances to aid me either way, I should hold the charge not to be proved. But the other charges, if severally sworn to by a credible witness, and the united weight of their testimony is to overcome the effect of the respondent's word (second oath), I may be obliged to attach such a degree of importance to the combined testimony of these witnesses as to hold the charges to which they severally speak as sufficiently proved in law against the opposing testimony of the respondent."

In the *North Renfrew case* there were nine independent charges of corrupt practices committed by Thomas Murray, the brother and agent of the respondent. Each charge was proved by one witness only, and was based upon offers or promises, not upon any act of the agent. Admitting the general circumstances and much of the conversation, and in the very words of each witness, Thomas Murray gave a different color to the language and a different turn to the expression used, which altered the meaning of the conversations detailed by the witnesses, and so constituted in effect a complete substantial denial of the character of the charge attempted to be proved, and in many respects he directly contradicted the witnesses. The learned Judge discussed at some length the question as to whose testimony he should act upon, and observed: "It is impossible to avoid seeing and feeling that the

more frequently a witness is contradicted by others—although such opposing witnesses contradict him on a separate point—the more is our confidence in that single witness affected, until at length, by the number of contradictory witnesses, we may be induced in effect to disbelieve him altogether. It is difficult to believe that so many are wrong ; it is easier to believe that one is wrong so many times ; and the more there are who speak against him, the more we are led to believe that he is the one who is in the wrong. . . . The question of veracity does not depend only upon the strength of numbers, nor in some cases does it do so at all. Its true basis is character. It is upon the quality of the evidence, and the point is to determine that quality.” In the application of these observations in several cases, the determination was against the respondent, although it was expressly stated that if each case stood alone it would have been decided the other way. In one case the learned Judge said : “ I would, as I have already said of other charges, decide this against the petitioner if this were the only charge ; but as it is one of a series of charges, each one of which is supported by a different witness, I do not know what I can do, even in so small, I may say so trivial, a matter, unless I give effect to the accumulated weight of testimony, when I have no reason whatever to doubt the truth of the respective witnesses who maintain these charges.”

I have found no reported case which deals with this question. On an indictment for perjury, the oath of the defendant, which is charged to be false, is nevertheless, for certain purposes, assumed by the law to be true ; that is, to warrant a conviction it is held necessary to have the evidence of two witnesses, or if only one, that “ there be some documentary evidence, or some admission, or some circumstances to supply the place of a second witness ” (*per* Tindal, C. J., *Reg. v. Parker*, Car. & M. 639). In *Reg. v. Yates* (Car. & M. 132), Coleridge, J., held that one witness was not sufficient to sustain an indictment for perjury ; that this is not a mere technical rule, but a rule

founded on substantial justice. The facts in *Reg. v. Parker* are worth noting: A debtor had made affidavit that he had paid all the debts proved under his bankruptcy except two, and in support of an indictment for perjury on that affidavit several creditors were called, each of whom proved the non-payment of a debt due by the debtor to himself, and this evidence was held insufficient. The distinction between a criminal prosecution and the present case is not to be overlooked, but considering the respondent's position as a defendant in this proceeding, there is not only the presumption of innocence of an offence charged against him in his favor, but also the maxim, applicable in civil as in criminal cases, "*semper presumitur pro negante.*" (See 10 Cl. & Fin. 534.)

The respondent is charged with corrupt practices. There were four cases on which the learned Judge took time to consider, and three were held to be sustained, and the election was declared void. He was in the position of a defendant accused of an offence before a competent tribunal. The presumption of innocence, until his guilt was proved, was in his favor—having denied the charge; the maxim above quoted was in his favor also. The case as put is one of even and fully balanced testimony; each separate charge is supported by only one witness, and is contradicted by the respondent on oath; and, as I understand from the judgment delivered, would have been found against the petitioner if it had been the sole charge, for though the proof adduced by the petitioner sustained it, it was answered and displaced by the respondent's evidence. It is not asserted that this evidence in rebuttal was untrue, or that the respondent was a man not worthy of belief. I cannot follow the reasoning which makes the fact that several independent charges were, *prima facie*, proved—each by one witness only, and were rebutted, though by the respondent alone—a ground for convicting him of all, for no distinction can be drawn between them. And yet I cannot to my own satisfaction answer the arguments on which the judgments in this and the *North*

Renfrew case were founded, and I am relieved from the necessity of so doing, as on the other grounds taken I fully concur in the judgment of my brother Burton.

BURTON, J. A.—We are fortunately, in this case, not embarrassed with any difficulty arising from a conflict of testimony. The learned Judge finds expressly that there was nothing in the evidence of the respondent, nor in the manner of giving it, which could or did excite any suspicion whatever against its perfect truthfulness, whilst in commenting upon the evidence both of Hill and Sufferin, it is clear that he had not formed an equally favorable opinion of their manner of giving their testimony or of their conduct as disclosed by themselves, remarking that the behaviour of the latter, even on his own version of what occurred in conversation with another witness when going to vote, and his voting against the respondent after voluntarily engaging to support him, had not been altogether creditable; whilst Hill had shown some feeling against the respondent in giving his evidence.

We have before us, therefore, the learned Judge's views of the way in which the witnesses impressed him, and we have to draw such inference from the whole evidence set out on the record as we think he should have drawn, and find accordingly.

It must, in the first place, be borne in mind that no *acts* of bribery were established; what is alleged in the two cases of Hill and Sufferin (assuming them for the present to constitute corrupt practices within the meaning of the statute) consisted merely of *offers* or *proposals* to bribe. In such cases it ought to be made out beyond all doubt that the words imputed to the respondent were actually used, because, as has been remarked in one of the decided cases, when two people are talking of a thing which is not carried out, it may be that they honestly give their evidence, but one person understands what is said by another differently from what he intends it. Still more should that be the case when the adverse finding is

attended with such highly penal consequences as the Legislature has declared shall follow the infraction of several clauses of the Election Act.

The learned Judge reports that he should have found both these charges disproved if there were no collateral or accompanying circumstances to aid him either way. He finds all the other charges, with the exception of the last (to which I shall presently refer), disproved, which should, I venture to think, have some weight.

The collateral circumstance which turned the scale, and induced the learned Judge to arrive at a different conclusion, was what occurred at Matthias' Hall. The speech there delivered induced him to adopt the case of the petitioner with respect to these two charges also; partly, as he says, "because of the weight of testimony by their united force, and partly because they are to some extent of a like nature with the Matthias' Hall charges, resting upon the influence or upon the alleged interest and influence of the respondent with the Government or Ministry of the day, which it is," he adds, "not improbable the respondent used as an argument on these occasions, as he unquestionably did on the occasion of the speech."

I can quite understand that a judge or a jury may find their confidence considerably shaken in a witness whom they were at first inclined to credit, by his being contradicted by a number of witnesses, although each witness speaks of a different subject. Still, after all, it comes back to the question of what credit is to be given to the witnesses on each side.

The judge or jury, under such circumstances, would scrutinize the evidence of the witness with greater care. The maxim of law is, "*ponderantur testes non numerantur*," and, as laid down by Mr. Starkie, no definite degree of probability can in practice be assigned to the testimony of witnesses; their credibility usually depends upon the special circumstances attending each particular case; upon their connection with the parties and the subject matter of litigation, and many other circumstances, by a careful

consideration of which the value of their testimony is usually so well ascertained as to leave no room for mere numerical comparison.

I do not understand that there is any conflict of evidence as to what occurred at Matthias' Hall; the speech, as proved on both sides, is substantially the same.

The weight of the evidence, then, so far as it is increased by what the learned Judge calls its united force, is confined to the two charges in respect of Hill and Sufferin.

There is a peculiarity about these election cases, that each charge constitutes in effect a separate indictment. It seems to me, therefore, that if, in the opinion of the Judge, there is not sufficient evidence to support the charge, or, in other words, if evidence is given on both sides, and the Judge gives credit to the respondent, and so dismisses the charge, the respondent cannot be placed in a worse position because a number of charges are submitted, in each of which the Judge arrives at a similar conclusion, or that a limit could eventually be reached where, although his conclusion upon the particular charge in addition to the others would in itself be favorable to the respondent, the Judge should feel called upon, by reason of the multiplicity of the charges in which the respondent's evidence and that of the witnesses opposed to him have been in conflict, to come to an adverse decision by reason of the cumulative testimony which he has previously discredited. To my mind, an accumulation of such acquittals should, if any weight is to be given to it at all, be thrown into the scale in favor of the respondent.

The only two charges in which there is a conflict of evidence are those of Hill and Sufferin. The learned Judge, in the first of these cases—a case dependent altogether upon the witness' precise recollection of the words used and the way in which they were understood—reports his conviction of the perfect truthfulness of the respondent, and that Hill's evidence was given with a manifest bias; and he comes to the conclusion at first to

believe the respondent—a conclusion which, from a perusal of the evidence, I should also have arrived at, but in the correctness of which I am further confirmed by two circumstances not referred to by the learned Judge, viz.: (1.) That Hill himself states that he did not regard it as a bribe at the time, but only awoke to the consciousness of there being anything corrupt in it some six weeks afterwards, when it was deemed necessary to bind him down by a statement under oath. (2.) That it was deemed necessary so to fetter him. These two circumstances, apart altogether from the explicit denial by the respondent, carry conviction to my mind that the learned Judge's first impression was the correct one.

In the Sufferin case it is clear that when the alleged conversation occurred Sufferin had avowed his intention to support the respondent, who was aware of the fact, and any promise thus made could not have been made in order to induce him to vote or refrain from voting; and this renders Sufferin's version of it highly improbable. He is, moreover, contradicted by two witnesses besides the respondent. Sufferin himself admits, "I was not induced to support him by this offer of \$3,000 (that is, as to the laying out of \$3,000 on the roads in his township); it made no definite impression on my mind at the time;" and the conduct of this witness was such as not unnaturally to call forth the remark from the Judge, that it was not straightforward dealing, and was calculated, and perhaps purposely so, to deceive. This also, subject to the investigation of the two other charges, he held to be not proved. "But," adds the learned Judge, "the other charges, if severally sworn to by a credible witness, and the united effect of their testimony is to overcome the effect of the respondent's unsupported word, I may be obliged to attach such a degree of importance to the combined testimony of these witnesses as to hold the charges to which they severally speak as sufficiently proved in law against the opposing testimony of the respondent."

The learned Judge then proceeded to investigate the remaining charges, holding one of them not proved, and the other, viz., the Matthias' Hall speech, is one about which there is no conflict of evidence.

We may assume, therefore, that but for the learned Judge's view of that speech, he would have disregarded the united force of the adverse testimony; and had he taken the same view of that speech which we are inclined to do, he would not have varied his first decision upon the other charges.

It would seem that both the respondent and his opponent claimed to be supporters of the Ministry of the day; but that the respondent claimed to be the recognized ministerial candidate, having been nominated by the Reform party. He claimed further, that his opponent, having originally pledged himself to support him and then coming out in opposition, could not expect to retain the confidence of the Government, and that according to his ideas of constitutional practice, the patronage in the constituency would be in his hands, as the ministerial candidate, whether elected or not.

It seems to be admitted on all sides that it was felt to be a grievance of some standing, that strangers were sent up to superintend the work on the roads, and the respondent is said to have stated that, whether elected or not, he would endeavor to get it remedied. Taken in the most unfavorable view for the respondent, what he did say, according to Mr. Teviotdale's evidence, was, "He would have the patronage, as he was the choice of the Government, he would have it whether elected or not elected;" adding by way of explanation, as I understand it, "It was the laying out of money on the roads and appointment of overseers."

There is a slight difference between the respondent's version of this speech and that of some of the witnesses; but, taking them in the strongest way against him, I have been unable to convince myself that they constitute a corrupt practice, or that they differ substantially from

what is constantly done by candidates, in impressing upon electors the importance to themselves of being represented by a ministerial candidate.

The learned Judge holds that such language cannot amount to an offer or promise of any place or employment, or a promise to procure, or to endeavor to procure, any place or employment to or for any voter or other person, within the 1st section of 36 Vic., cap. 2, and therein we agree with him; but he holds that it amounts to undue influence within the 72nd section of 32 Vic., cap. 21, or according to the common law.

To prove an offence within that section, it must be shown either that physical force was used or threatened, or that loss or damage was caused or threatened upon or against some person in order to induce or compel such person to vote or refrain from voting. This was not a threat, nor does it come within the definition of physical force or violence, or doing any loss or harm to any one. Can it then be brought within the remaining words, "in any manner practice intimidation?" To bring the case within this branch of the section, it would, I presume, be necessary to show that some one had been intimidated. But it appears to me to be quite impossible to hold that it comes within this section at all. There was no attempt to work upon the fears of any one; it was rather upon their hopes or expectations; and would come more properly, if an offence at all, within the bribery clauses, but the learned Judge has himself given the answer to that.

Baron Bramwell, in reference to the evidence necessary to bring a case within this clause, is reported to have said: "When the language of the Act is examined it will be found that intimidation, to be within the statute, must be intimidation practised upon an individual. I do not mean to say upon one person only, so that it would not do if practised upon two or a dozen, but there must be an identification of some or more specific individuals affected by the intimidation, I will not say influenced by it, but to whom the intimidation was addressed, before

it could be intimidation within the statute, otherwise it comes under the head of general intimidation."

The suggestion that the offence was one at common law was perhaps sufficiently answered by the statement that no such charge was made in the petition, and that the respondent should not be called upon to meet it. But apart from that, I apprehend it would be necessary to go much further to sustain such a charge, and to prove that the intimidation is of such a character, so general and extensive in its operation, that people were actually intimidated to such an extent as to satisfy the Court that freedom of election had ceased to exist in consequence; just such evidence, in fact, as would be required to avoid an election on account of an organized system of treating or bribery.

Great latitude is necessarily allowed in speeches of this kind; and to hold an election illegal because of the use of such language as is attributed to the respondent in this case would be to render a law, harsh enough admittedly in many of its provisions, intolerable. What the respondent is alleged to have said was an argument or reason for the electors supporting him rather than his opponent, if they believed his statement that he would be more influential with the Government in securing local benefits, and in redressing the particular grievances of which they complained; but it would be going, in my opinion, far beyond what the Legislature ever contemplated, to hold that self-recommendation of that kind on the part of a candidate was to subject the electors to have the election avoided, and to expose him to the disgrace of disqualification for any office in the gift of the Crown, or any municipal office, for eight years.

I think the evidence fails to establish either of the two first charges, and that the remaining charge is not a corrupt practice within the Act; and adopting the language of Mr. Justice Willes in the *Lichfield case*—"considering the extreme solemnity and weight which ought to be attributed to an election that has, so far as one can judge, in all its substantials been regularly and properly conducted

—looking to the amount and weight of evidence which ought justly to be required to disturb a proceeding of that description ;” and looking, I may add, to the highly penal consequences resulting to the respondent, and finding no evidence which, in my opinion, ought to outweigh the denial of the respondent, and justify me in finding him guilty of the offences charged, I think we ought not to arrive at a conclusion adverse to him, and that the appeal should be allowed and the petition dismissed.

PATTERSON and MOSS, JJ. A., concurred.

Appeal allowed and petition dismissed.

(9 *Journal Legis. Assem.*, 1875-6, p. 198).

PEEL.

BEFORE CHIEF JUSTICE DRAPER.

BRAMPTON, 2nd to 5th, and 14th June, 1875.

BEFORE THE COURT OF APPEAL.

TORONTO, 17th December, 1875, 24th January, 1876.

WILLIAM HURST, *Petitioner*, v. KENNETH CHISHOLM,
Respondent.

Corrupt practices—Partial denial—Appeal—Further evidence—New trial—Withdrawal of petition—Refusal to allow substitution of petitioner.

Charges of corrupt practices, consisting of promises of money and of employment, were made against the respondent and one M., his agent. Both the respondent and his agent denied making any promises of money, but left the promises of employment unanswered ; and the Judge trying the petition (*Draper*, C. J. A.) so found, and avoided the election. Thereupon the respondent appealed to the Court of Appeal, and under 38 Vic., c. 3, s. 4, offered further evidence by affidavit, specifically denying any offer or promise, directly or indirectly, of employment. *Draper*, C. J. A., who tried the petition, having intimated to the Court that had the respondent and his agent made the explicit denial as to offers of money or employment which it appeared they had intended making, he would have found for the respondent,

Held, under these circumstances, that the finding of the Election Court should be set aside, and that a new trial should be held before another Judge on the *rota*.

Observations on the difference between an election trial and a trial at *Nisi Prius*.

The Court recommended the petitioner to withdraw his petition in this case ; and on an application for that purpose, another elector having applied to be substituted as petitioner,

Held, per Burton, J. A., that as the Court of Appeal had been placed in possession of all the charges against the respondent, and of the evidence in support of them, and had recommended the withdrawal of the petition, and no sufficient additional grounds having been shown for such substitution of petitioner, the order for the withdrawal of the petition should be granted.

The petition contained the usual charges of corrupt practices.

Mr. Boulton and Mr. Evatt for petitioner.

Mr. Bethune and Mr. James Fleming for respondent.

The evidence showed that the respondent, in company with one Martin Maddigan, when canvassing a voter, Daniel Mullen, was given to understand that Mullen wanted money for his vote. Mullen's wife also swore—"Mr. Chisholm said, if my husband was put out of work for him, he would find him employment; if he voted for him, and he was put out of his winter's work through his means, he would find employment if he voted for him." The respondent swore that he did not make Mullen any promise, or offer him anything; that he told Mrs. Mullen that it was against the law, and that it was impossible to pay for a vote; that he had to take a solemn oath if elected that he had neither paid nor promised to pay anything; and that he would not pay one cent for a vote in any shape whatever.

Another voter, Michael Hugo, and his wife swore that when canvassed by the respondent and Maddigan, money was talked of, and that the respondent said, "If he (Hugo) got out of employment, he (respondent) would give him employment if he would vote for him." The respondent swore that he did not offer any money in any form of words or in any shape, or any inducement.

The respondent's evidence in each case was confirmed by Martin Maddigan.

DRAPER, C. J. A. [in giving judgment on this part of the case, said:] "Although the respondent and Martin Maddigan meet the statements as to money, or promises

of money, by a full denial, neither they nor any other witness touch the question of employment, which, as far as I see, is unanswered. This conclusion makes it my duty to determine the election and return of the respondent void."

The respondent appealed to the Court of Appeal from this decision of the learned Chief Justice, and set out amongst others the following as one of the grounds of appeal: "That the judgment of the said Chief Justice was erroneous in finding that the evidence of Daniel Mullen, Mrs. Mullen, Michael Hugo and Mrs. Hugo, was contradicted by the evidence of the said respondent; and that on the hearing of the said appeal the respondent will ask that this Honorable Court hear the affidavits of the said respondent, Martin Maddigan and John Maddigan, specifically denying the said alleged offers or promises."

The affidavits above referred to specifically denied any offer or promise, directly or indirectly, of employment to the voters referred to.

Mr. Blake, Q.C. (Attorney-General of Canada), and Mr. Bethune for respondent.

Mr. Hector Cameron, Q.C., and Mr. Beatty, Q.C., for petitioner.

RICHARDS, C. J., in delivering the judgment of the Court, pointed out the difference that existed between an election trial and one at a Nisi Prius Court, showing that in the latter there was every facility for the analysis and comparison of evidence, and the discovery and correction of error; while at election trials, by reason of the usually large mass of evidence taken, and the fact that such trials were comparatively new, the liability to mistake by omission or mistake was much greater. Under these circumstances, he thought it would be rather severe if rules applicable to Nisi Prius trials were strictly enforced at the Election Courts, especially when, perhaps by

an oversight on the part of counsel, parties might be visited by very severe penalties.

He had communicated with the learned Chief Justice by whom the present case had been tried, and he (Chief Justice Draper) had said that if the respondent and the witness Maddigan had made the explicit denial as to the alleged offers of money or employment which it appeared they had intended making, he would have found for the respondent. The Chief Justice had further stated that he was satisfied that the respondent and Maddigan had intended making such denial, but it not having been made, he was obliged to decide against the respondent on the evidence. Under these circumstances, this Court could not allow the finding of the Election Court to stand. They would therefore grant a new trial, to be held before another Judge on the *rota*. On account of the irksomeness attending the second trial of the same case by a Judge, and having in view the advantage of the evidence being brought before a mind new to the case, they deemed it preferable to have the trial conducted by another Judge on the *rota*. The petitioner should seriously consider whether it would not be better to withdraw the petition altogether without costs to either party. The costs of the former trial and of the appeal to abide the event of the new trial.

Subsequently, on an application by the petitioner to withdraw the petition,

Mr. JUSTICE BURTON made the order for the withdrawal of the petition, and on the 24th January, 1876, transmitted the following report thereon to the Speaker :

“I have the honor to report to you, in accordance with the requirements of the 39th section of the Controverted Elections Act of 1871, that an application made by the petitioner against the return of Kenneth Chisholm as member for the County of Peel, for leave to withdraw such petition, was heard before me on the 19th instant ; and being of opinion that the withdrawal was not the

result of any corrupt agreement, or in consideration of the withdrawal of any other petition, I granted the application.

"I beg further to report that on the hearing of such application, one George Sharpe, an elector, applied to be substituted for the petitioner; but as the Court of Appeal had been placed in possession of all the charges, and of the evidence which had been adduced in support of them; and had, with such information before them, considered it a fit case for withdrawal, and had recommended that course to the petitioner, although he had not availed himself of the permission within the prescribed period; and as no sufficient additional grounds were in my opinion shown for such substitution, in the exercise of the discretion vested in me by the Act, I declined to allow such substitution."

(9 *Journal Legis. Assem.*, 1875-6, p. 167).

LINCOLN (2).

BEFORE MR. JUSTICE PATTERSON AND MR. VICE-
CHANCELLOR BLAKE.

ST. CATHARINES, 11th to 13th September; 4th and 5th
December, 1876.

TORONTO, 30th September; 6th, 23rd and 30th December, 1876;
21st February, 1879.

NATHAN HENRY PAWLING *et al*, *Petitioners*, v. JOHN
CHARLES RYKERT, *Respondent*.

Waiver of particulars—Amendment—Cumulative acts of bribery—39 Vic., c. 10, s. 37—Affecting result of election—Bets to change votes—Interim certificate to Speaker—Stolen ballots—Costs.

The respondent was elected by a majority of 23, and on the trial of an election petition, filed to set aside his election for corrupt practices and illegal votes, evidence was given by both sides on a charge not properly set out in the petitioners' particulars of corrupt practices. At the close of the evidence the respondent objected that the charge was not in the particulars, and that it was not verified by the affidavit of the petitioners:

Held, 1. That the petitioners might amend their particulars, and that the charges in the petition were wide enough to cover the charge.

2. That as to this charge, the parties had in fact gone into evidence without particulars, and that the petitioners' affidavit verifying the particulars was not necessary.

Where corrupt practices by agents, and others in the interest of the respondent, affected less votes than the majority obtained by the respondent at the election :

Held, under 39 Vic., c. 10, s. 37, that such corrupt practices did not extend beyond the votes affected thereby, and did not avoid the election.

Where, in addition to the above corrupt acts, bets were made by agents of the respondent and others, with a number of voters who were supporters of N., the opposing candidate, the effect of the bets being that in order to win the bets, the voters must vote for the respondent :

Held, that these bets were for the purpose of getting votes for the respondent, and were corrupt practices; and that in connection with the other corrupt acts proved as set out above, they affected the result of the election; and that the election was therefore avoided.

The Court cannot grant an interim certificate declaring an election void, as the statute contemplates only one certificate to the Speaker, certifying the result of the election trial.

During the progress of a scrutiny of votes, certain ballot papers, counter-foils and a voters' list were stolen from the Court, which had the effect of rendering the proceedings in the scrutiny useless.

And in disposing of the costs, the Court ordered the respondent to pay the costs up to the date the election was avoided, but that, under the circumstances, each party must bear his own costs of the scrutiny.

The election of January, 1875, having been declared void (*ante*, p. 391), a new election was held on the 18th and 25th February, 1876, at which the respondent was declared elected by a majority of 23.

The petition was thereupon filed, containing the usual charges of corrupt practices, and claiming the seat for the unsuccessful candidate.

Mr. MacLennan, Q.C., Mr. Hodgins, Q.C., and Mr. Calvin Brown, for the petitioners.

Mr. M. C. Cameron, Q.C., and Mr. Peter McCarthy, for the respondent.

Evidence was given on behalf of the petitioners on a charge that John Junkin, the financial agent of the respondent, had been guilty of corrupt practices in bribing one Arthur Belcher. The evidence showed that the corrupt practice was an offer to the wife of Belcher to procure the husband's vote for the respondent in the manner set out in the judgment. At the close of the evidence,

Counsel for the petitioners contended that the evidence sustained the charge, and asked for leave to amend the particulars.

Counsel for the respondent contended that the charge relied upon was not in the particulars, and therefore, as laid, it failed ; and that the evidence did not sustain any charge of a corrupt act. No new particulars could now be allowed, for by the Act of 1876 the particulars must be verified by the oath of the petitioners. The amendment would be in effect new particulars, and the evidence would have to be given over again. Besides, the evidence of Mrs. Belcher showed that the petitioners had long been in possession of the facts relied upon.

PATTERSON, J. A.—The amendment is opposed on the grounds, amongst others, that the charges now asked to be added are founded on facts which were stated in the affidavit made by Mrs. Belcher before the petition was filed, and which has been ever since in the hands of the solicitors for the petitioners ; and that the charges ought to have been embodied in the particulars delivered under the order in the cause, instead of the illusory statements then made, and which are neither supported by the evidence now given nor by the information which it is sworn was in the solicitors' hands. This is a serious objection, and upon it we should refuse the amendment, as we did yesterday refuse one on the same grounds ; but in this case no objection was made at the close of the petitioners' evidence, but the respondent called evidence, not to rebut the charge in the particulars which the petitioners' evidence had not approached, but to rebut the charge of offering inducements to the wife to procure her to persuade her husband to vote or refrain from voting. The charge has thus been brought before us by both parties ; and we think that however strongly we disapprove of the practice of paying so slight regard to the order for particulars as to furnish as particulars a statement based on no grounds warranting the oath now required to accompany the particulars, and to withhold the facts embodied in the affidavit, which, by another most reprehensible practice, had been taken as a fetter upon the

conscience of the witness, yet we have to regard this application as one to state on the record what has already been investigated as if it had been there.

It is further objected that under section 28 of the Act of 1876 (39 Vic., c. 10), we cannot allow these amended particulars without an affidavit of verification, and that if they are received the charge must be investigated afresh. We do not think this objection well founded. The petition is wide enough to cover the charges in their amended shape. The parties may go on without particulars if they please, and this is in fact what they have done as to these charges.

The amendment is made under the power given us by section 33 of the Act of 1870-71 (34 Vic., c. 3), and by General Rule No. 6, and has the same effect as any amendment at *Nisi Prius*. We do not read section 28 of the new Act as restricting this power.

[The learned Judge here reviewed the evidence.]

On the evidence we find that John Junkin did offer Anne Belcher a valuable consideration, by offering either to procure two months' rent to be thrown off, or that time should be given for the payment of that rent; and that this was, within the words of section 67, subsec. 1, 31 Vic., c. 21, an offer or promise of valuable consideration to a person on behalf of a voter, or to a person in order to induce a voter to vote or refrain from voting.

We hold that Junkin was an agent of the respondent. The acts done by him during the election contest are unquestionably sufficient evidence of agency, if they had the requisite recognition by the candidate or his agents. We think this recognition is shown both by the evidence of the respondent himself as to his calling on his friends at his nomination to work for him—not merely to vote for him; by the fact, which is apparent from the evidence, that the whole of what was done in the city was left to Junkin and others to do; and by the circumstance that Junkin was named by the respondent as his financial agent; and Junkin's evidence that he constantly resorted

to the respondent's office to meet with the other persons who were canvassers like himself, and compare progress, and otherwise promote the election of the respondent.

The respondent may not have been at any of these meetings, or have any personal knowledge of the persons who were there; but his clerks were there, and he had the means of knowledge, and must be held, as the proper inference of fact, to have known of what was taking place.

BLAKE, V.-C., concurred.

An order was then made appointing the times and places for a scrutiny of votes to be taken before the Registrar (Mr. C. A. Brough) in each municipality of the electoral division.

Evidence was given that one Dexter Potter was an agent of the respondent, and that on the night preceding the election he made bets with two voters, John Jackson and Abram Hollingsworth, in consequence of which bets they voted for the respondent.

After argument, the following judgment was given :

PATTERSON, J. A.—We hold that the agency of Dexter Potter is established, and that, therefore, the charges of bribery by an agent are made out in the cases of Jackson and Hollingsworth; but the effect of these acts of bribery, either by themselves or in connection with the Belcher case, do not extend beyond the votes affected.

Evidence was then given of the payment of \$150, in sums of \$50 each, to Patrick Hennegan, John Y. Cushman and Thomas Nihan, by one Arthur Aiken, on the 22nd or 23rd February. The money was placed in three separate parcels on a table in the tavern kept by Aiken at St. Catharines, and each of the parties above named took a \$50 parcel of the money. One of the witnesses (Hennegan) swore he used the money for election purposes.

Evidence was also given of the payment by the said Arthur Aiken of the taxes of nine income voters between the 10th and 17th February.

The petitioners then applied for leave to amend charging the above as corrupt practices by an agent of the respondent, and the Court, by consent of parties, then adjourned to meet in Osgoode Hall, Toronto, on the 30th September, on which day the following judgment was delivered :

PATTERSON, J. A.—After conference, we hold that the agency of Aiken is not proved, but that the evidence is sufficient (if not rebutted) to show an illegal act by Aiken under s. 67, subs. 5 of the Election Law of 1868 ; and we allow an amendment to charge an offence by Aiken under that subsection, and also to charge an offence in respect of the payment of the income tax of the nine voters.

The Court then adjourned to meet at the Court House in St. Catharines, on the 4th December.

On the reassembling of the Court,

Mr. Maclellan, Q.C., proposed to read to the Court evidence taken before the Registrar on the scrutiny of votes.

Mr. M. C. Cameron, Q.C., objected.

The COURT ruled that the evidence taken on the scrutiny was not admissible on the trial of the petition.

The petitioners then called the following witnesses :

Arthur Aiken : I went out on the night previous to the election with James Brownlee ; cannot say where I first met him ; cannot say if it was before I went to Rykert's office ; had no particular business in meeting him ; if I swore I met Brownlee for election purposes I must have been crazy at the time ; we talked about the election and about making bets ; I heard some one say at Rykert's office, " We must all do our best ; " don't know who it was ; I think Rykert was in one of the rooms, but am not positive ; we were all to do our best at the elec-

tion; think there were fifty people present; have no recollection of scrutineers being appointed; was at a committee meeting at Cain's, for St. James' Ward, a week or two before that; we were looking over the voters' list. When I met Brownlee on the night before election I had about \$1,000 in my pocket; I went out to get men to bet; I did not know whether the men were Neelon or Rykert men; wanted to bet they would vote for Neelon, or for them to bet they would not vote for Rykert; believe Brownlee got some men to bet that way; do not recollect how much money I gave Brownlee to bet with; I think Brownlee gave me back all the money except \$35; the bets were \$5 and \$10; do not recollect how much I bet myself; expended about \$50 or \$60 in bets; have no recollection of saying it was \$60 or \$70; I sent Brownlee to make bets; he told me he had made two bets; I asked Dexter Potter if he knew anyone who would bet that they would vote for Rykert; Potter said, "Come along," and Brownlee and I went with him; I suppose I had six or seven other bets; think one of the bets occurred next morning; they were not all Neelon men I bet with; nearly all of them I thought would vote for Neelon; I thought a little money at election time would do almost anything, and I think so still; have great faith in money at election times; thought the election would be close, and did what I could to change it; spent \$55 altogether in bets; made other bets with supporters of each party; bet that Neelon would be elected; bet on majorities all over the county; the bet on the morning of the polling day was with David Grant, a colored voter; went to Jacob Moore's place on polling day with Dexter Potter, and offered to bet with him; do not know if Moore had any money; Moore said he did not want to bet; had nearly \$1,000 in my pocket, the balance of what I had the night before; first talked of these bets with Brownlee on the night previous to the election; no one suggested the idea of making these bets; think I met Brownlee at Rykert's office; did not consult anyone beside Brownlee

and Potter ; thought I was getting round the law, but it seems I was not ; lost all of the bets but one ; kept no account of them in any book ; only put them down on a piece of paper in an envelope ; have had large financial dealings with Mr. Rykert ; did not bring a farthing of this betting account into the dealings with him ; may have discussed these bets with him ; he never mentioned bets to me ; he told me I was very foolish ; have made no claim through him for any money expended in bets ; did not know Moore was a supporter of Neelon's ; thought he would accept the bet when I made it ; think he said he would see Potter again.

Cross-examined : I am not an agent of Mr. Rykert's ; was in his office on the night before the election ; did not receive any instructions from Rykert ; most of the bets were sporting bets.

Dexter Potter : I supported Mr. Rykert at last election ; do not recollect that there were any committee rooms for St. James' Ward ; looked over the voters' list when at Cain's house to see who were voters ; there may have been a dozen people present ; the names of two scrutineers were agreed on ; Brownlee and Aiken asked me about several voters ; mentioned the names of Wise, Parker, John Jackson, Hollingsworth, and the two Tyrrells ; cannot remember how many I spoke of ; Collins' name was mentioned later in the evening ; do not think Moore's name was mentioned ; might have spoken about David Grant ; think I was out with Brownlee and Aiken about two hours ; I bet that the voter would vote for Neelon ; think Aikens suggested the bets ; my father stopped at my house, and asked me to go up to Cain's place ; I went there expecting to meet others and hear what was going on ; went there for purposes of the election.

Counsel for the petitioners contended that, in any event, Aiken was an agent of the respondent, either from his attending the respondent's committee meetings, or from

Potter, who had been held to be respondent's agent, requesting him to canvass with him the night before the election; that the respondent's majority was 23; that the bets proved were with voters who had intended voting for Neelon, and the effect of their voting for the respondent was to "count two on a division." Under s. 37 of the Act of 1876, these acts, in connection with the illegal practices already adjudicated upon, have affected the election: *Hackney case* (31 L. T. N. S., 69; s. c., 2 O'M. & H. 81.)

Counsel for the respondent contended that the agency of Aiken had not been established, and that the petitioners had failed to bring the case within the operation of s. 37; that to do so they must show that the corrupt practices and illegal acts have had a material effect on the election.

BLAKE, V.-C., referring to the majority of 23, by which the respondent was declared the member for the county, said the question was—would the result have been that had not these corrupt practices been adopted? He referred to the advance of \$150 by Aiken to Cushman and others, and to its having been admitted that that money effected the very object the person advancing the money had in view, and it was but reasonable to suppose it more or less affected the result of the election. Then again, this same gentleman advances money to persons to pay their income taxes, which payment gave them a vote, and it is a reasonable conclusion that the election was more or less affected by these nine voters whose income tax was paid. Then there are these three men going out and pursuing a system of betting for the purpose of getting votes, and it is out of all question to say that this did not affect the election. Aiken says he thought by doing so he would get outside of the law, for he knew he could not openly bribe any voter: that is the system of betting which was pursued on the night previous to the election, and again on the morning of the election. He goes to bet with a person more for the purpose of inducing him not to vote the way

the other intended. Had these corrupt practices not prevailed there is no doubt the result of the election, instead of being in favor of the respondent, would have been the other way; and under the 37th section of the Act, it is impossible to say that the seat can be held by respondent. He did not express any opinion on the point as to Aiken being an agent of the respondent, although he strongly believed he was such agent.

PATTERSON, J. A., agreed with the conclusion arrived at by his learned brother. It was shown that there had been a considerable expenditure of money, and that Aiken actively, and for considerable time before the polling day, was endeavoring by the expenditure of money to influence the election, and that two corrupt practices already adjudicated upon were committed by agents of the respondent, with his money and in concert with Aiken. It is impossible to say that the corrupt acts were of such trifling nature or extent, that the result cannot be reasonably supposed to have been affected by those acts and illegal practices. We therefore declare the election void. It is not necessary to hold that Aiken was an agent, but I am strongly of opinion that his agency is established.

The Court then adjourned to 23rd December, to allow the scrutiny of votes to proceed. On the reassembling of the Court on that day,

Mr. Maclellan moved to have the statutory certificate sent to the Speaker, showing that the election of the respondent had been declared void. He also asked that the Court declare that sec. 31 of the Election Act of 1876, which prohibits the trial of an election petition during the session of the Legislative Assembly, did not apply to prevent the scrutiny of votes proceeding in this case.

Mr. Cameron, for the respondent, declined to consent to the trial proceeding during the session.

The COURT declined to grant the interim certificate asked for, as the statute contemplated only one certificate; and held that the prohibition in the Act applied to prevent the scrutiny proceeding during the session of the legislature.

After the close of the then session of the Legislature, the scrutiny of votes proceeded before the Registrar. A case affecting the revision of the voters' lists by the County Judge of Lincoln was stated by the Registrar and reserved for the decision of the Judges under 36 Vic., c. 3, s. 34. (See *re Lincoln Election, Borrowman's case*, 2 App. R. 316.) The judgments in appeal from the Registrar are reported *post*, p. 500.

During the proceedings before the Registrar, certain ballot papers, etc., required to identify a number of votes which had been declared bad, were stolen from the Court.*

Both parties thereupon made admissions before the Registrar as to how the voters whose ballots had been stolen had voted, which admissions the respondent afterwards sought to withdraw.

A special case was then settled by the election Judges for the opinion of the Court of Appeal: *re Lincoln Election Petition*, 4 App. R. 206. The Court held the admissions were not binding, and that no evidence could be given to show how the voters had voted. The proceedings were then terminated by an application to the election Judges to certify the result of the trial to the Speaker, and to dispose of the costs. After argument, the judgment as to costs was given by

PATTERSON, J. A.—I think that there are abundantly sufficient reasons for not giving either party the costs of the scrutiny; but the respondent should pay the costs up to the time when his seat was declared void.

The certificate to the Speaker, after setting out the proceedings and the result of the election trial, set forth the following special report:

"And the said Judges further specially report that while the scrutiny was proceeding before the Registrar at the Court-house in the city of St. Catharines, some of the papers which had been procured from the custody of the Clerk of the Crown in Chancery for the purpose of the

* The Report of the Commissioner appointed to investigate the theft of the ballots will be found in Ontario Sess. Paper, No. 32, 1878.

trial—namely, some ballot papers, some counterfoils, and a voters' list—were stolen from the said Court-house, and were not recovered; and that by reason of the loss of those papers, it was impossible for the Judges to determine for whom the majority of good and lawful votes were polled at the said election."

(12 *Journal Legis. Assem.*, 1879, p. 209.)

LINCOLN (2).

SCRUTINY OF VOTES.

BEFORE MR. JUSTICE PATTERSON.

TORONTO, 26th November, 1877, to 31st July, 1878.

NATHAN HENRY PAWLING, *Petitioner*, v. JOHN CHARLES RYKERT, *Respondent*.

Selling and giving liquor during polling hours—Tavern-keepers—Aliens—Onus probandi—Supporting vote by other qualifications—Income Voters—Tendered Ballots—Parol declaration.

By the 3rd sec. of 39 Vic., cap. 10, which is substituted for the 66th sec. of the Election Law of 1868, tavern-keepers, or persons acting in that capacity for the time, who sell or give liquor at taverns on polling day and within the hours of polling, are guilty of corrupt practices; but persons who treat or are treated at such taverns are not affected by the statute. (*James Ford's vote*).

Where evidence was given of parol admissions made by certain voters, some years before the election, that they had been born in a foreign country, and also evidence that since the parol admission the voters had voted at Parliamentary elections, and had sworn to the voter's oath as to being British subjects by birth or naturalization:

Held, 1. That the oath at the polls could not be treated as testimony, not having been given in any judicial proceeding.

2. That by swearing at the polls he was a British subject by birth or naturalization, the voter only stated the legal result of certain facts.

3. That there was therefore no presumption of naturalization sufficiently strong to rebut the presumption of the continuance of the original status of alienage. (*Jacob Shenck's vote*.)

Where a voter, in support of his own vote, swore that he was born in the United States but that his parents were British subjects,

Held, that the whole statement of the voter must be taken, and that it amounted to this: 'I was born in the United States of British parents.' (*James Mulbrennan's vote*.)

Certain aliens had taken the oaths of allegiance, &c., before a Justice of the Peace of a town, which oaths were administered to them in a township, but within the same county:

Held, that under the Alien Act, 34 Vic., cap. 22, sec. 2, Can., the Justice of the Peace, in administering the oaths, was acting ministerially and not judicially ; and that the oaths were properly administered. (*John Johnson's vote.*)

A voter whose qualification is successfully attacked may show a right to vote on income ; but in such case he must prove that he has complied with all the requirements of the Act which are essential to qualify him to vote on income. (*James B. Gray's vote.*)

A voter was assessed in two wards of a town ; he parted with his property qualification in one of the wards, but voted in such ward :

Held, that the vote might be supported on the qualification in the other ward, which, if the voter had voted on it, would have made it necessary for him to vote in another polling division. (*William T. Gibson's vote.*)

A person assessed for land he does not own, though receiving rent for it from a tenant, is not qualified to vote. (*John Clark's vote.*)

Where a voter offered to vote at a poll, but did not ask for or put in a tendered ballot paper :

Held, that the Ballot Act required the vote to be given secretly, and that the parol declaration of the voter as to his vote could not be received in order to add it to the poll. (*George Secord's vote.*)

The scrutiny of votes referred to on pp. 493, 499, having taken place before the Registrar, appeals from his decisions were heard by consent before Mr. Justice Patterson.

Mr. Hodgins, Q.C., for petitioner.

Mr. Be'hune, Q. C., and the Respondent in person, for the respondent.

JAMES FORD'S VOTE. (*Liquor cases.*)

A number of voters who had given or partaken of liquor at taverns during polling hours on the polling day were held disqualified for corrupt practices. The following judgment was given on the appeals affecting this class of voters :

PATTERSON, J. A.—Some of the cases in these appeals raise the question of the construction of section 3 of the Act 39 Vic., c. 10, which reads thus :

“No spirituous or fermented liquor, or strong drink, shall be sold or given at any hotel, tavern, shop, or other place, within the limits of a polling district, during the polling day therein or any part thereof, under a penalty of \$100 for every offence ; and the offender shall be subject to imprisonment, not exceeding six months, at the discretion of the Judge or Court, in default of payment

of such fine; and this provision is substituted for the 66th section of the Election Law of 1868."

The votes which are claimed to be vitiated are of three classes :

1. Those of tavern-keepers who sold or gave the liquor.
2. Those of persons who treated at taverns.
3. Those of persons who were treated.

The first and general question, which applies to all the cases, is whether a violation of the section during the hours appointed for polling is a corrupt practice.

The Act of 1875, 36 Vic., cap. 2, s. 3, made any violation of the 66th section of the Election Law of 1868, during the hours of polling, a corrupt practice. The present section is substituted for section 66.

I see no reasonable grounds for reading the word "substituted," in any narrow sense. The new section is *in pari materia* with the former one. It merely varies the terms in which the offence of selling or giving liquor on polling day is prohibited. It retains the same penalty, though it adds more stringent means of enforcing it. It does not, in terms, repeal sec. 66, and though it does not, in terms, enact that the new section is to be read as sec. 66 of the former Act, I think the expression used is at least as effective as that form of amendment would have been to attach to the infringement of the substituted law all the consequences attendant upon the infringement of the original law. In other words, I think the new law must be substituted in the reading of the Act of 1875, as well as in reading the provisions for keeping peace and good order at elections, contained in the Act of 1868.

It was argued by Mr. Bethune that as secs. 1 and 2 of the Act of 1875 dealt with acts expressly required to have been done with corrupt intent, we ought not to import into sec. 3, which says nothing of intent, the implication of corrupt practice derived from the Act of 1873. This argument, I think, is untenable for two reasons. The Act is not providing a general scheme, or dealing generally with any classes of offences. It is an amending Act only,

and makes amendments more or less isolated in their character. There is, therefore, no sound rule which makes it necessary to construe any particular amendment by the light of an association which we may discover here, but which may be absent when the new clause is read with the rest of the law which it amends. But it happens that these three sections are classed in the amending Act under the head of corrupt practices—a circumstance which, as shown by the present Chief Justice of Appeal in his judgment in the *South Ontario case* (12 Can. L. J. 223; s. c., *ante*, p. 455), may be taken into account in determining the immediate and special object the Legislature had in view; and which, in the present case, certainly does not dissociate the clause in question from the subject of corrupt practices, showing rather that in re-enacting the law in its altered shape, it was in the contemplation of the Legislature that, in the application of it, an offence against its provisions would be a corrupt practice, as it had been before.

It is, therefore, in my opinion, clear that every tavern-keeper, or person acting in that capacity for the time, who sold or gave liquors at the tavern within the hours of polling, committed a corrupt practice.

Then, as to persons who were not tavern-keepers. I have no hesitation in holding that it is the selling or giving only, and not the receiving, which is prohibited under the penalties attaching to the violation of this law. The words are plain and unambiguous, and cannot be extended to include accessories. The penalty is upon *the offender*; and the offender is the person who sells or gives. In this respect, the statute differs from the English Act, 17 & 18 Vic., cap. 102, sec. 4, which makes accepting or taking an offence as well as giving.

In considering whether the man who treats another is one who gives within the meaning of the section, it will be useful to refer to the old sec. 66. It provided that every hotel, tavern and shop, in which spirituous or fermented liquors or drinks are ordinarily sold, shall be closed

during the day appointed for polling in the wards or municipalities in which the polls are held ; and no spirituous or fermented liquors or drinks shall be sold or given to any person within the limits of such municipality during the said period, under a penalty of \$100 in every such case. This section had been the subject of several judgments in contested election cases.

In the *South Essex case* (11 Can. L. J., 247 ; *ante*, p. 235), the Chancellor avoided the election for a corrupt practice participated in by an agent of the candidate, by receiving a treat at a tavern during the polling hours. That decision has not, that I am aware of, ever been followed ; and it was in effect overruled by the judgment of the Court of Appeal in the *South Ontario case* (*ante*, p. 420). In the last named case, the Court held that the person prohibited was the tavern-keeper, or the person acting in that capacity. It has been suggested by Hagarty, C. J., in his judgment given in the Court of Appeal in the *North Wentworth case* (11 Can. L. J., 296 ; s. c., *ante*, p. 350), that to confine the section wholly to the innkeeper would prevent its reaching the case of a private person who might, on the polling day, broach casks of ale or spirits for the public use of all comers ; and in the *South Ontario case*, Draper, C. J. A. (*ante*, p. 439), did not take exactly the same view of the section as the other members of the Court, his opinion being that it extended to all persons who sold or gave liquor in a tavern.

In this state of the law, the amending Act was passed. It prohibited the selling, &c., at any *hotel, tavern, shop, or other place* within the limits of a polling district. Now, *hotel, tavern* and *shop* are evidently places *ejusdem generis*, and the general words, "or other place," must therefore be confined to places *ejusdem generis*. In this particular, the Legislature has affirmed the existing law, as it had been construed by the Court in the *South Ontario case*, so far as the place of selling or giving was concerned.

There is no prohibition in the clause against selling or giving at any other place. It probably was considered

sufficient for the purposes of this enactment, and with the object of keeping peace and good order, so to limit its operation. A person giving under any other circumstances would apparently be in one of two positions. He would either do the act in perfect innocence, as in the case of giving a glass of beer or of wine to a friend dining at his table; or he would do it, as in the suggested case of broaching a cask for all comers, or even in the case of carrying a bottle in order to treat an occasional tippler, in a way that would probably amount to bribery.

The object of the enactment seems to be the same as in the former case, while it is so framed as to avoid the difficulties that attended the attempt to construe the earlier clause. The leading idea is that liquors kept for sale at hotels, taverns, shops, or other places where liquor is usually sold, shall not be dispensed on polling days, either by selling or under the pretence of giving. The mandate points to that object; and it cannot be disobeyed, except by the act or permission of the person in whose control the liquors are. That person is the offender, if the law is disobeyed. If he obeys the law and sees that none of his liquor is sold or given, he has done what the statute was passed to insure. It is only after a violation of it on his part that a second giving, such as occurs when one man treats another, can take place. I do not think such a second giving is aimed at by this statute, which attaches no penalty to the purchasing, or accepting, or drinking. I do not think it was ever intended by the words before me to make two offences—not one joint offence, but two separate offences—out of what is in reality but the one act. Giving is, in my opinion, prohibited to prevent an evasion of the prohibition to sell, and, like its companion word, points to the vendor only.

If intended to have a more general application, we should not find it limited in its operation to the walls of the tavern, or counter of the drinking booth, or other place for the sale of liquor, as it is in this clause; and we should find, what is here wanting, a penalty attached to accepting or drinking.

Some observations which I made in the *South Ontario case* (12 Can. L. J., 222; *ante*, p. 452), seem as apposite to the present law as to the old sec. 66: "It would seem a faulty rule of construction, on which we should hold that the Legislature, in contemplation of a tavern-keeper disobeying the law by parting with liquor, meant to provide against such disobedience by the further command, that if he did so disobey, the recipient of the liquor must not give it away again under a penalty, and particularly as no penalty is attached to the act of receiving it. If such an intention existed, it should, and doubtless would, have been somewhat more clearly expressed. The only other case in which it can be suggested that *giving* at a tavern, &c., is the act intended, is the case of persons bringing liquor from elsewhere to the tavern and giving it away. This is too remote a possibility to require more than a bare mention, and no good reason can be suggested why a giving of that nature should not be an offence wherever committed, as well as when committed in a tavern or place where liquor is ordinarily sold."

I think, therefore, that when a man treats another at a tavern, he does not *give* within the meaning of this penal law; but that the offender is the inn-keeper or his substitute.

JACOB SHENCK'S VOTE. (*Alien cases.*)

The appeal in this and nine other cases were heard together, as involving the same question of law. The respondent had given evidence before the Registrar of a parol admission made by each voter, in some cases many years before the election, of his having been born in a foreign country. Against this admission evidence was given on behalf of the petitioner, that since the date of admission, the voter had voted at this or a former parliamentary election and had taken the voter's oath, which contained a declaration that he was a subject of Her Majesty by birth or naturalization. The Registrar considered that the oath displaced the parol admission, and held the vote good.

Mr. Bethune contended that the admission was *prima facie* evidence against the voter, and that it was incorrect to allow the oath, as that was showing, in answer to an admission, that the party had at another time asserted the contrary: *Tipperary case* (3 O'M. & H. 34); *Taylor on Evidence*, s. 686; *Brightly on Elections*, 395; *People v. Pease* (27 N. Y. 45; 30 Barb. 588); *Rex v. Twynning* (2 B. & Ald. 386); *Lapsley v. Grierson* (1 H. L. Cases, 504); *Reg. v. Inhabitants of Harborne* (2 A. & E. 540); *Chambers' Dictionary of Elections*, 23; *Montgomery v. Graham* (31 U. C. R. 57); *Doe Hay v. Hunt* (11 U. C. R. 367.)

Mr. Hodgins contended that as the admissions as to foreign birth were made long before the *status* of voter was acquired, it could not affect the after acquired *status*. Admissions to affect a person in an office or holding a title or *status* cannot bind until the office, title or *status* has vested. Voting at an election without qualification involves a criminal neglect of duty, and renders the voters liable to a penalty, and the presumption is in favor of innocence; therefore the former parol admission cannot now be taken as against the oath and the voting: *People v. Pease* (*supra*); *Brightly on Elections*, 411, 413; *Regina ex rel. Carroll v. Beckwith* (1 Pr. R. 284); *Rex v. Edith* (8 East, 542); *Fitch v. Weber* (6 Hare, 57; s. c. 12 Jur. 76); *The Acorn* (2 Abbott, U. S. 434).

PATTERSON, J. A.—In the case of nine voters objected to as being aliens, it was established that each one had been born out of the Queen's allegiance; and it was then contended that the burden of proving naturalization was cast upon the supporters of the votes.

This contention was resisted on the grounds that each voter had taken the oath prescribed by the statute when his vote was challenged at the poll, in which oath he had sworn (amongst other things) that he was a subject by birth or naturalization.

In each case it has been proved that the voter was not a subject by birth; therefore, it was argued, his oath must be understood as affirming that he was naturalized;

and having thus professed to have voted as a naturalized subject, it is of no avail that he was not born a subject, but some evidence must be given to show that he was not naturalized. To accede to this suggestion would be unwarranted by any rule of evidence.

The oath at the polls cannot be treated as testimony in this matter, either primary or secondary in its character. As a statement made by the voter in his own interest, it proves nothing for him.

It derives no greater force from being made under oath; for the reasons, amongst others, that it could not be received as secondary evidence unless it were out of the power of the person adducing it to produce primary evidence; that it was not given in any judicial proceeding, the functions of the Returning Officer being ministerial only, and his duty compelling him to receive the vote when the oath was taken; and that the adverse litigant had no opportunity to cross-examine the deponent. (*Taylor on Evidence*, s. 434, &c.)

The other branch of the argument is to the effect that because the voter said he was naturalized, it must be assumed that he was naturalized until proof that he was not naturalized has been given. The foundation for this argument fails, because the man did not say he was naturalized. He said he was a subject by birth, just as much as he said he was a naturalized subject. He simply swore to his *status*, "a subject by birth or naturalization"—a legal result of certain facts—and we do not know what facts influenced his opinion, any more than we know whether he thought he was a subject by birth or a subject by naturalization.

But granting, for argument's sake, that he had unequivocally announced that he voted as a naturalized subject, he would still, in my opinion, be bound to rebut by evidence the inference of alienage arising from his foreign birth.

No authority has been produced for the proposition that the fact of the voter assuming to vote as a natural-

ized subject raises a presumption of naturalization sufficiently strong to rebut the presumption of the continuance of his original *status*, except an American case, *People v. Pease* (27 N. Y. 45); but that case, even if satisfactory in its reasoning, was distinguished from those before us by the circumstances that the presumption was there acted on in favor of innocence in a proceeding against the individual whose conduct was in question.

The well-known rule which, as applied to pleading, requires a party to plead the facts which are within his knowledge, and which throws on him the onus of proving such facts, unites in this case with the presumption that things continue in the same state till the contrary appears: *Price v. Price* (16 M. & W. 241-2).

There is no presumption in this Province that, because a man who was once an alien owns and is assessed for land, he has become a subject, because aliens may hold land and must pay taxes on it.

The assertion of the attacking party is, "You are an alien, which I show by proving that you were born abroad." The reply is, "I admit I was born abroad; but I say I have been naturalized, and you must disprove that." The rejoinder may be in words from *Best on Evidence*, p. 370: "You assert that a certain event took place, not saying when or where, or under what circumstance; how am I to disprove that, and to convince others that at no time, at no place, and under no circumstances has such a thing occurred." In another place the same learned author says (p. 374): "There is a third certain circumstance which may affect the burden of proof; namely, the capacity of parties to give evidence. 'The law,' says one of our old books, 'will not force a man to show a thing which by intendment of law lies not within his knowledge.' *Lex neminem cogit ostendere quod nescire præsumitur*. From the very nature of the question in dispute, all or nearly all the evidence that could be adduced respecting it must be in the possession of or easily attainable by one of the contending parties, who accordingly could at once put an end

to litigation by producing that evidence ; while the requiring his adversary to establish his case because the affirmative lay on him, or because there was a presumption of law against him, would, if not amounting to injustice, at least be productive of expense and delay. In order to prevent this, it has been established as a general rule of evidence that the burden of proof lies on the person who wishes to support his case by a particular fact which lies more peculiarly within his own knowledge, or of which he is supposed to be cognizant."

Our statutes for the naturalization of aliens have, I believe, invariably provided means of preserving and furnishing to the alien the proof of his naturalization, and for the reception of that proof whenever the fact had to be established by evidence. If any of these voters claim to have been naturalized under any one of our statutes, they cannot complain of being asked to produce the evidence provided by law. If they claim to have been naturalized by any other process, such, for instance, as a private Act of the Imperial Parliament, the wisdom of the rule I have quoted becomes very manifest.

The statute of 1871, 34 Vic., c. 22, Can., supplies an illustration of what the effect of yielding to the contention in support of these votes would be. For the relief of persons who had taken the oaths required for the naturalization of aliens by former Acts, but had not procured the certificates which those Acts authorized, it was enacted that such persons should be entitled to the privileges of natural born British subjects, giving them power to procure a certificate from the functionary who had administered the oaths, or to make an affidavit of the fact of having taken the oaths ; and then, after providing for oaths being taken by aliens who had not theretofore done so, it was enacted that every affidavit taken under that Act should be filed with the Clerk of the Peace of the county, who should file it of record in his court ; and, *upon its being so filed*, the person making it should be entitled to the benefit of the Act and the privileges of British birth. And the Act

further provides for a certificate from the Clerk of the Peace, which should be *primâ facie* evidence of naturalization.

We held in one case under the present scrutiny, that to obtain the benefit of this Act it was not sufficient to give oral evidence that the oaths had been taken under some former Act; but that either the certificate of the functionary who administered the oaths must be produced, or the oath allowed by that statute must have been taken and filed of record.

We may infer from the passing of the Act of 1871, even if we did not know it otherwise, that many persons took the oaths but did not complete the steps necessary to their admission to the privileges of subjects—and yet supposed they had done all that was required. This shows how little the fact of the claim to vote as a naturalized subject could be relied on as raising a presumption of any force; and how appropriate the rule is which I hold to apply here, and which requires the production of the evidence provided by law for the very purpose of being produced on such an occasion as this.

I am of opinion that the objection to the nine votes on the ground of alienage must be sustained.

JAMES MULRENNAN'S VOTE. (*Alien case.*)

In this case the voter was called, and proved that he was born in New York, in the United States, but that his parents were British subjects, and that he derived the knowledge of both facts from his parents. The Registrar held that the statement of the parents was good evidence of the voter's alienage, but not of their nationality, and disallowed the vote.

PATTERSON, J. A.—I think the whole statement of the voter in his evidence must be read together, not as hearsay, but as his own admission: and it amounts to this: I was born in the United States, of British parents. Vote held good.

JOHN JOHNSON'S VOTE. (*Alien cases.*)

The objections to this vote, and two others, are set out in the judgment.

PATTERSON, J. A.—The votes of John Johnson, and of Lewis Tyrell and Nelson Tyrell, were objected to on the ground that they, having been aliens, had not been properly naturalized, because the oaths required by the Act of 1871 (34 Vic., c. 22, s. 2, Can.) had been administered to them by a Justice of the Peace for the town of St. Catharines, appointed under commission for the town only, and not for the county, and had been administered to them in one of the townships and not within the limits of the town.

I think the Justice had authority to administer the oaths. The statute requires the oaths to be taken before some Justice of the Peace or other person authorized to administer oaths under the Alien Act of 1868 (31 Vic., c. 66, Can.) The persons designated by that Act are a Judge of any Court of Record in that Province of Canada in which the alien resides; or any person authorized to administer oaths in any of the Courts thereafter mentioned; or any Commissioner to be appointed by the Government for that purpose; or any Justice of the Peace of the county or district within which the alien resides. The courts named include, in Ontario, the Court of General Sessions of the Peace, or the Recorder's Court of the county or city within the jurisdiction of which the alien resides.

This Act was passed on the 22nd of May, 1868. On the 4th of March of the same year, the Legislature of Ontario had passed an Act (31 Vic., c. 18) authorizing the Lieutenant-Governor to appoint Justices of the Peace for every city, town and county in Ontario. The question is whether a Justice of the Peace appointed *for* the town of St. Catharines, under the Ontario Act, was a Justice of the county of Lincoln within the meaning of the Dominion Act I think he was. He was not charged by the Act of 1871 or 1868, with any judicial duty, or any duty which had any

necessary reference to the authority exercised, under the commission, within the territorial limits to which it extended. He was simply a person designated to discharge a certain ministerial duty. The Dominion statute added a function or power to those he already possessed, as it did in the case of Judges of Courts of Record and the officers of Quarter Sessions and Recorders' Courts. There is no reason which I can perceive for reading a Justice *of* the county as if it were a Justice *for* the county, which is the expression ordinarily used when territorial jurisdiction is spoken of—as *e. g.* in ss. 306, 307 of the Municipal Act of 1873. The description "Justice of the Peace of the county," is sufficiently descriptive of a Justice who is not a Justice *for* the whole county, but only for a part of it.

It would be an anomalous state of things if a person living in St. Catharines could not have effectually taken the oath before a Justice for the town. And yet that would be the effect of our holding the present oaths to have been administered without authority. No such consequence was contended for in the argument of this matter. The objection urged was that the Justice could only act within the town; but the statute gives him no right to act within the town unless he is a Justice of the county. I have no doubt that in furtherance of the object of the Act of 1871, which was to enable aliens to put on record, in the solemn form of an oath, their purpose of transferring their allegiance to the British Crown—but which gave no effect to the oath until a further act was done, by filing it of record in the designated office—it is our duty to give as liberal a construction to the statute as its language will fairly bear: and not to hold, without necessity, that the steps taken in good faith, and in literal compliance with the law, are nugatory merely because the expression "*of* the county" is capable of being read as meaning "*for* the county;" and where the function in question is not one of those belonging to the officer as a Justice, but one belonging to the individual designated as *personæ designatæ* for a particular purpose.

I therefore hold that these persons are entitled to vote as naturalized subjects.

JAMES B. GRAY'S VOTE.

The voter was assessed for property sufficient to qualify him to vote, and also for an income of \$400. His name appeared on the voters' list as a voter in respect of property, and he so voted. Evidence was given to show that he had parted with the assessed property prior to the revision of the assessment roll; and the vote was then sought to be sustained as a vote in respect of income. The voter, at the time of voting, did not produce to the Deputy Returning Officer a receipt for taxes, as required by sub-sec. 2 of s. 6 of 39 Vic., c. 10, although he stated he had it with him at the time of voting.

PATTERSON, J. A.—I hold that the voter appearing on the voters' list and on the poll-book for property only, and that qualification having been successfully attacked, the petitioner has a right to show that the voter had a good right to vote on income; and that the fact of the voter being assessed for \$400 income, does not throw the onus on the other side to show that he had no right to vote on income, because the income qualification includes the payment of taxes before 31st December of the previous year, under 39 Vic., c. 10, s. 5, and in this particular case, the production of the receipt, under s. 6, sub-sec. 2. The evidence shows that he produced no receipt to the Deputy Returning Officer, and I hold that there is no presumption that he had an income qualification, so as to require a specific objection to that kind of qualification. Vote held bad.

WILLIAM T. GIBSON'S VOTE.

The voter was assessed in St. Paul's ward and St. George's ward, in the town of St. Catharines, for property sufficient to qualify him to vote in either ward; but prior to the revision of the assessment roll, he parted with his property in St. Paul's ward. At the election he voted in St. Paul's ward and not in St. George's ward, in which he was then owner of the assessed property.

PATTERSON, J. A.—It has already been held that the ostensible qualification being successfully attacked, a voter may show that he had another qualification. I think that the vote having been *primâ facie* regularly received, and therefore the Deputy Returning Officer having had jurisdiction, there is nothing either in the letter or the spirit of the law to prevent the vote being supported on the ground of a qualification which, if the voter had voted on it originally, would have made it necessary for him to vote in another polling division. Vote held good.

JOHN CLARK'S VOTE.

The voter had originally been a squatter on Crown land adjoining the Welland Canal, but some years prior to the election had rented it to a tenant, who then occupied it and paid him rent for the same, the voter not personally occupying the property. He was assessed as owner, and his tenant as occupant.

PATTERSON, J. A.—The vote of John Clark is objected to on the ground that he is neither owner, tenant nor occupant of the land on which he qualifies. It is a small piece of land which belongs to the Crown. John Clark and his brother James acquired the right to the possession of it from a former possessor, who conveyed it by deed to them. The evidence is that John bought James' right, but no release from James appears to have been executed. The value would not entitle two to vote; but it is shown that John occupied the land exclusively of James, and for some years past had let it to a tenant, who pays him rent, and that he has not been personally occupying. By 32 Vic., c. 21, s. 5, the voter must be actually and *bonâ fide* the owner, tenant or occupant of real property, and must be entered on the assessment roll as the owner, tenant or occupier. "Occupant" is defined as signifying a person *bonâ fide* occupying property otherwise than as owner or tenant, either in his own right or the right of his wife, but being in possession of such property, and enjoying the revenues and profits arising therefrom to his own use.

By the assessment law, 32 Vic., c. 36, which received the royal assent on the same day as the Election Act, the assessor was (s. 21) to state whether the party assessed was a householder, freeholder or tenant, by affixing the letter F., H. or T. ; and (s. 26) when the land was assessed against both the owner and occupant, or owner and tenant, the assessor was to place both names within brackets on the roll, and write opposite the name of the owner the letter F., and opposite the name of the occupant or tenant the letter H. or T. The Legislature thus defines owner as meaning freeholder ; and occupant and householder are made convertible terms ; and the distinction between a tenant and an occupant, whatever that distinction may be, is preserved. The force of these two definitions of occupant clearly excludes this voter. He is not the householder ; he does not actually occupy the land, and he does not enjoy the revenues and profits of it, but only that portion of them which his tenant pays him as rent, the tenant enjoying the residue. Being neither freeholder, tenant nor occupant, he cannot vote.

GEORGE SECORD'S VOTE.

The facts of this case are set out in the judgment.

PATTERSON, J. A.—In George Secord's case there is a conflict of evidence between the voter and the Deputy Returning Officer, as to what took place at the poll, when the voter was required to take the statutory oath. The voter's account of the matter is, in substance, that he was questioned as to whether he still lived in Grantham, and that he said he did not, but that he lived in the electoral division, and he was required to take the oath ; whereupon the Deputy Returning Officer read the oath to him, making it read that he was still a resident of the *township of Grantham* instead of *this electoral division* ; that the voter refused to take this oath, but offered to swear he was a resident of the electoral division, which the Deputy Returning Officer would not permit ; and the voter therefore left the polling booth without having re-

ceived a ballot paper. The petitioners contend that the vote ought to be counted for Neelon, because the voter ought to have been allowed to take the oath and to vote; and because he now swears he intended to vote for Neelon. The Deputy Returning Officer contradicts the voter, and says he read the oath just as given in the statute, and, in fact, entered the voter's name as of Niagara; but that he did not read to the voter the latter part of the oath, as to his being a subject, and the parts following that. The Registrar took the view of the facts presented by the voter's evidence. On this question of fact, I do not see sufficient grounds for disturbing that decision, although on merely reading the evidence, without seeing the witnesses, it may not be that which would at first suggest itself.

I have been referred to a decision of Wilson, J., in the *North Victoria case* (11 Can. L. J., 162), in which he expressed an opinion that some voters, whose names had been omitted from the voters' list, but who were duly assessed and entitled to vote, and who had presented themselves for the purpose of voting, and declared their intention of voting for a particular candidate, but had been refused the right by the Deputy Returning Officer, ought to be counted as having voted for that candidate. The Court of Queen's Bench held, on appeal from this judgment, that the learned Judge was right in refusing to set aside the election to enable the men to vote, when their candidate had a majority without them; but I do not gather from the judgment of the Chief Justice (37 U. C. R., 234) that the view of Wilson, J., as to counting votes, met with approval. It would seem difficult to reconcile that opinion with the principle of voting by ballot; but to act upon it in the present case, in which the intention to vote for the petitioner was not declared at the time, would be to extend it so far as to leave the principle out of sight. I have already had occasion, during this scrutiny, to refer to the rule stated by Lord Coleridge, in *Mather v. Brown* (1 C. P. D., 596), and which commends itself to

my judgment as a sound one, that in these election matters we are bound to keep ourselves within the letter of the Acts and to abstain from any attempt to strain the law. I find provision made (ss. 13 and 14 of 37 Vic., cap. 5) for tendering ballot papers in certain cases, so that the votes may be given secretly and kept secret until the right to vote has been determined; but I do not find that open voting is in any case contemplated, to say nothing of receiving a vote when to the absence of secrecy is added the absence of some of the incidentals intended to secure honesty in voting at the poll. The question of the power of an unscrupulous Returning Officer to dishonestly affect the result of the poll, is one to be dealt with by parliamentary rather than judicial legislation. I have no doubt, however, that I ought not to add the vote.

(12 *Journal Legis. Assem.*, 1879, p. 209.)

PROVINCIAL ELECTIONS, 1879.

RUSSELL (2).

BEFORE CHIEF JUSTICE MOSS AND MR. VICE-CHANCELLOR
BLAKE.

OTTAWA, 4th December, 1879.

ADAM J. BAKER, *Petitioner*, v. IRA MORGAN, *Respondent*.

R. S. O., c. 10, s. 105, sub-sec. 2; 42 Vic., c. 4, s. 18.—Irregular marking of Ballots by Deputy Returning Officers—Recount by County Judge—Costs.

The petitioner had received a majority of the ballots cast at the election ; but on a recount before the County Judge, certain ballots, with other marks on the back than the initials of the Deputy Returning Officers, were rejected by the County Judge, thereby giving a majority to the respondent. Evidence was given on the hearing of the petition that the Deputy Returning Officers had, from a mistaken idea of their duty, placed the numbers of the voters, as marked in the voters' list, on the backs of the ballots.

Held, 1. That under 42 Vic., c. 4, s. 18, the marks so made did not avoid the ballots, and that such ballots should now be counted.

2. That as the petition had been rendered necessary by the mistakes of the Deputy Returning Officers, for which neither the petitioner nor respondent was responsible, each party should bear his own costs.

Semble, that the County Judge, acting ministerially on the recount of ballots, could not have investigated by whom or for what motive such marks had been made on the ballots.

The petition set forth that the petitioner had received a majority of 28 of the ballots cast at the election held on the 29th May and 5th June, 1879 ; but that, on a recount of the ballots before the Junior Judge of the county of Carleton, certain ballots, with other marks than the initials of the Deputy Returning Officers, had been rejected, thereby giving the respondent a majority of 27 : that such marks had been placed on the ballots corruptly or intentionally, or by mistake, by the Deputy Returning Officers ; and the petitioner prayed that they might be counted for him, and that he be entitled to the seat. The petition also contained the usual charges of corrupt practices.

Mr. O'Gara and Mr. Christie for petitioner.

Mr. A. F. McIntyre for respondent.

The evidence of the Deputy Returning Officers of the polling sub-divisions No. 6 Gloucester and Nos. 2 and 3 Cumberland, was to the effect that they had put numbers on the backs of the ballot papers corresponding with the numbers on the voters' list, believing it was their duty so to number the ballots.

The arguments of counsel are referred to in the judgment of the Court, which was delivered by

Moss, C. J. O.—My learned brother and myself think it quite unnecessary to trouble Mr. O'Gara with answering the objections to the *primâ facie* case advanced by the petitioner.

The general objection is couched in the form that the ballots have been so marked as to constitute a violation of the principle of the Ballot Act (R. S. O., c. 10), which, it has been correctly said, is the securing of secrecy and the non-identification of the voter; but, in working out this principle, we are obliged to look at the precise machinery which the Act has devised and employed. We can only gather the nature of that machinery from the words which the Legislature has chosen to use. Turning, then, to the 80th section, on which reliance is placed on behalf of the petitioner, we find it contended that there has been a violation of the principle of secrecy, which that section was designed to serve. That section, in effect, requires the Deputy Returning Officer to prefix to the names on the voters' list numbers. Those numbers, it appears in the present case, I think in the three polling sub-divisions now in question, were consecutive. I see nothing in the section to actually prohibit such a mode of numbering the names by the Deputy Returning Officer, but it might not be out of place here to remark that it is highly inexpedient for such a course to be adopted. Although the law has not prohibited it, and although the law does not intend that the election should be avoided simply because the Deputy Returning Officer has chosen to mark the names upon the voters' lists with consecutive numbers, it is quite obvious that the great

object of securing non-identification will be promoted by the adoption of arbitrary numbers. The section itself says that "The Deputy Returning Officer shall, upon receiving the copy of the voters' list from the polling sub-division for which he is to act, prefix a number to every name in such copy, and such numbers so prefixed need not be consecutive numbers, but may be chosen arbitrarily by the Deputy Returning Officer." I take it it requires no comment to establish that the sole object of that clause is to prompt the Deputy Returning Officer to use other than consecutive numbers.

It is further urged, though that would be immaterial here, in consequence of the small number involved, that in one case the Deputy Returning Officer did not affix a number to two names on the list. It appears from his evidence that the figures are not his. He has not sworn positively by whom they were made, but he has sworn that they must have been made by his poll clerk, and I think the fair effect of the whole of his evidence, taken together, is that in his opinion they were made by his poll clerk. He would not have been at liberty, in accordance with the law, to permit any one else to see the numbers, and we must act on the principle *omnia præsumuntur rite esse acta*.

I pass to the objection under sub-sections 7, 8 and 9 of the 90th section. That is the section which prescribes the mode of conduct which should be adopted by the Deputy Returning Officer upon a vote being tendered. After having ascertained that the name of the voter is upon the list, and after having heard and disposed of any objection which may be made, in the manner provided by the Act, the 7th sub-section prescribes the method of proceeding to actually give the vote by ballot. The Deputy Returning Officer is to "sign his name or initials upon the back of the ballot paper and upon the counterfoil attached thereto," to detach the ballot paper and deliver it to the voter, and to "write, or otherwise mark, upon such counterfoil, the number prefixed to the name of such person upon

the voters' list ;" and the only mark he is to make opposite the name of the voter on the list is one which shall "denote that he has received a ballot paper." Any tick or mark of any kind, to denote that, complies with the statute, and is all, indeed, that it designed. Now, in these cases, it appears that the Deputy Returning Officers endorsed upon the back of the ballot paper not merely their initials, but the numbers which appeared upon the voters' lists, and which, from the voters' list, had been properly transferred to the counterfoil. Under the Act of 1874 (R. S. O., c. 10), that would, I apprehend, have been a fatal objection to the validity of the vote, but the Act of 1879 (42 Vic., c. 4) was passed for the very purpose of remedying that difficulty. That statute, while still rendering the ballot paper invalid if marks are placed upon it other than the proper marks, namely, the official number corresponding to that upon the counterfoil, and the initials of the Returning Officer, contains this saving clause: "But words or marks corruptly or intentionally, or by mistake, written or made, or omitted to be written or made, by the Deputy Returning Officer on a ballot paper, shall not avoid the same."

I am of opinion that this case, upon the evidence, comes clearly within the proviso that, where the mark is made by mistake of the Deputy Returning Officer, the ballot paper is not avoided, but the vote is entitled to be counted. Upon the evidence here it is beyond controversy in my judgment that the Deputy Returning Officers honestly, although mistakenly, placed the numbers upon the ballot papers. They had no intention of violating the law, I am quite sure. Their mistake was one which arose from misinterpretation of the Act, and was precisely that kind of mark upon the ballot paper which the Legislature did not intend to have the effect of destroying the vote. Mr. McIntyre has pointed out difficulties that might arise, and objections that might be taken to that mode of procedure by a Deputy Returning Officer—that a Deputy Returning Officer who is a partisan might be enabled in this way to

gain an unfair advantage. That difficulty is one we are obliged to encounter in each particular case as best the Court can. The effect, if that were established in a particular case, might be to show that the mark had not been made mistakenly, but it would be hard to show that it had not been made corruptly. But the language of the Legislature is plain, that, under such circumstances, it did not intend that the act of the Deputy Returning Officer, by whatever motive animated, should have the effect of destroying the franchise.

Then, in furtherance of that argument, it was contended on behalf of the petitioner that section 197 shows that such an objection as this should be fatal to the vote. The argument is that there has been a disregard of the principles laid down by the Act. Now, we are to endeavor to arrive at the principles laid down by the Legislature which govern the election now in question by putting together the Act in the Revised Statutes, and the Act passed in 1879. The principles are, I think, what I have indicated. Followed out, they show that the petitioner in this case had a majority of the votes, that he was entitled to be returned, and that the onus is now cast upon the respondent to attack the return.

The charges of corrupt practices were then withdrawn on both sides; and after evidence had been given on behalf of the petitioner affecting the question of costs, the following judgments were delivered:

Moss, C. J. O.—The question of costs is one which could not have arisen in this precise form previous to the Act of 1879. Until that amending Act, which I have had occasion already to refer to, was passed, the effect of what has been shown to-day would not have been to entitle Mr. Baker to the seat. It is only by virtue of the saving clause contained in that statute that he is enabled, notwithstanding the mistake of the Returning Officers, to receive that seat to which the votes of the people entitled him.

Now, the first question in endeavoring to dispose of the matter of costs, is to ascertain, if we can, with whom the wrong originated. The Deputy Returning Officers had undoubtedly made a mistake; but for that it cannot be contended that the respondent was in any way liable. In the next place, a recount was asked for; and without entering into details as to the part which the respondent may have taken in setting the Judge in motion, it is quite sufficient to observe that, whatever was that part, the respondent was acting within his legal rights, and that if he failed in prosecuting the recount with success, the law had already made the provision for the penalty. He did not procure the return which the learned Judge in the discharge of his duty made. He procured that return, at least, no further than by asking the Judge to make the recount, and thus exercising his strictly legal right. Thus far, therefore, the respondent appears to have committed no act of which the petitioner is entitled to complain.

In the next place, we have to consider what was open to the Junior Judge upon the recount. It is, to say the least of it, by no means clear that the learned Judge could have received any of the evidence which we have heard to-day explanatory of the manner in which the Deputy Returning Officers fell into this unfortunate mistake. It is quite true that the Judge of the County Court or the Junior Judge, in proceeding with the recount, is to proceed in the manner pointed out by the 105th and 106th sections, and that the 105th section has been amended by the Act of 1879; but no provision has been made for the learned Judge entering into an investigation of the motives which led to the Deputy Returning Officer making any mark upon the ballot beyond those strictly authorized by law. If we turn for a moment to the wording of sec. 18 of the Act of 1879, I see the words are simply: "Words or marks corruptly or intentionally, or by mistake, written or made, or omitted to be written or made, by the Deputy Returning Officer on a ballot paper, shall not avoid the same."

What is the tribunal which is invested with the jurisdiction to determine whether "words or marks" which, in point of fact, are not authorized by the law, have been "corruptly or intentionally, or by mistake, written or made?" It is at least a grave question, and the inclination of my own opinion is to answer it in the negative as to whether the learned Judge could entertain, could listen to, such evidence upon an application which pointed merely to a recount, and while discharging the duties of a ministerial officer, acting under the clauses relating to recounting. At any rate, the learned Judge was not asked to enter upon any such investigation.

Some question is made as to the sufficiency of the notice served upon Mr. Baker. The notice was quite sufficient, at any rate, to enable him to appear with his counsel and object to its insufficiency. It would have been the easiest thing in the world to ask the learned Judge to adjourn the proceedings, and enable Mr. Baker to adduce before the Judge such evidence as this Court has heard to-day from the Deputy Returning Officers. That course was not taken. Mr. Baker chose to rely upon his objection to the notice. The law has not provided for the form of the notice in such a matter, that I am aware of. Mr. Baker, at any rate, knew this investigation was going on, I have no doubt. Then, if it was desirable to adduce evidence before the learned Judge, what course was open? I apprehend it to be quite clear, and indeed Mr. O'Gara conceded that it was quite clear, that a petition was absolutely necessary. There stood the return, declaring in due form of law that Mr. Morgan had been elected, by the majority of the duly qualified electors in this constituency who had voted, to represent them in the Legislative Assembly. How was this to be got rid of, unless by taking proceedings under a petition? No answer to that can be suggested. Then what should the respondent have done upon the petition being filed? He was charged with personal corruption, and therefore not in a position to have resigned; but supposing him to have been in a position

to have resigned either before the petition was filed or after, what would have been the result, suppose he had resigned before the petition was filed and the petitioner had not chosen to prosecute any petition. I asked the learned counsel to define the exact attitude which his client would have occupied if Mr. Morgan had chosen to recede from that position. It is extremely difficult to say what would have occurred. Mr. Baker would not have been declared returned by any duly recognized authority, and the Legislature would have had to recognize the return of the Judge, or given some special directions on the subject. It is unnecessary to say that the Legislature has contemplated the withdrawal from itself of the giving of special directions in such matters, and desires them all to be dealt with according to the general law.

Then a similar observation applies to the case of a withdrawal after the petition. Supposing him to be in a position to do so, he could only have done so a certain time after it had been filed, and by taking certain steps. He does, before serious proceedings are taken, file a disclaimer as far as this point is concerned, though it contains a proviso that if Mr. Baker still claims the seat his right will be resisted.

That does not enter into the question of the general costs, which at present the Court is considering. In these cases, as I understand the doctrine, the Courts have always taken a wide and liberal view of the right of a person, in the interests of the public, to contest a return which was at all questioned. If there was real substantial reason for questioning the return of Mr. Baker, neither Mr. Morgan nor any other person, supposing Mr. Baker to be returned, would have been culpable—would have been doing anything but discharging a duty to the public—in contesting the return. If he had done so and failed, he would have had to pay the costs; but if a petition was necessary, and he simply stood on the defensive, and said: You, the petitioner, have not been declared to be duly returned; you can only show that you were entitled to the seat by show-

ing that those marks were put "corruptly or intentionally, or by mistake," by the Deputy Returning Officers; it is in the interest of the public that, before you are entitled to enjoy the seat, such proof should be given—that does not strike one as an unreasonable course to take. I do not indeed see what other course was open. It is clear that if the Junior Judge was not in a position to receive evidence upon the conduct of the Deputy Returning Officers, upon the motives that led them to place these erroneous marks upon the ballots, it was absolutely essential for the petitioner to come before an Election Court and establish his right.

In my opinion, the result of these considerations, to which I have no doubt others might readily be added, is that each of the parties should bear his own share of the costs.

BLAKE, V.-C.—I agree in the conclusion that is arrived at. I think one must bear in mind that in this case no fraud or impropriety has been brought home to the petitioner or the respondent; that the result which is being impeached by the petitioner in this case is one flowing from the act of the officers that have been appointed under the statutes. The Deputy Returning Officers are independent officers, selected under the statute for the purpose of this duty. Unfortunately, ignorantly but honestly, they so dealt with the ballots as that, except for the Act of 1879, these votes must necessarily have been rejected, while neither the petitioner nor the respondent is responsible for that. That was an act entirely outside of anything they had to do in the conduct of the election. So that by them, and by them alone, has this difficulty arisen. Then the matter was brought before the Junior Judge of the County; and I quite agree with what the Chief Justice has said, that his duty began and ended with a recount of the votes; that he could not have investigated the matter; and certain ballots were produced before him. and on counting those ballots, looking at some of them,

he saw there was a mark there which might have identified the voter in such a way as to avoid the election under the Act. He could not obtain the explanatory evidence ; he could not set the matter right. Up, therefore, to the period of the presenting of the petition, all has been a matter which cannot be traced to the respondent or the petitioner. It has been a miscarriage, owing to the conduct, honestly though ignorantly, of the officers appointed under the statute.

I do not think there has been any case where, under circumstances such as presented to us to-day, the Court has charged a person entirely innocent of any impropriety or wrong conduct, with the costs which have been necessary in order to set right that which these officers have done incorrectly. It was necessary for the petitioner that these proceedings should be taken, that he should set aside, not a wrong the respondent had done him, but what these officers had done, in mistaken pursuance of what they thought to be their duty.

Looking at the fact that Courts have been very desirous of investigating and examining everything which could tend to throw discredit upon an election, we would be closing the door to a fair investigation in many cases, if in this one the respondent were to be charged with the costs of a proceeding to set aside, not any wrong done by him, but by the officers, with whose appointment he had nothing to do. I think, therefore, that each party must, unfortunately, bear his own costs of the litigation up to the present.

(13 *Journal Legis. Assem.*, 1880, p. 9).

DUFFERIN.

BEFORE CHIEF JUSTICE MOSS.

TORONTO, 29th October, 1879.

JAMES SLEIGHTHOLM, *Petitioner*, v. JOHN BARR, *Respondent*.*Preliminary objection—Status of Petitioner, how impeached.*

As the Ontario Act (R. S. O., c. 11) makes no provision similar to that in the Dominion Controverted Elections Act, 1874 (37 Vic., c. 10, Can.), limiting the time within which preliminary objections to an election petition should be taken, the special circumstances of each case must determine whether the preliminary objections have been taken with sufficient promptitude.

An objection to the *status* of a petitioner cannot be taken by preliminary objection.

A petitioner in an election petition who has been guilty of corrupt practices at the election complained of, does not thereby lose his *status* as a petitioner.

Except where there are recriminatory charges against the unsuccessful candidate, or for the purpose of declaring the petitioner's vote void on a scrutiny, the conduct of a petitioner at an election cannot be inquired into. And in this case there is no distinction between a candidate-petitioner and a voter-petitioner.

Semble, That if the petitioner in this case was proved at the trial of the election petition to have been guilty of corrupt practices at the election complained of, the petition could not be dismissed.

The petition contained the usual charges of corrupt practices.

After the petition was at issue, but before the day for the trial was appointed, the respondent became aware of a charge of corrupt practices against the petitioner, who claimed to be a voter at the election in question. Thereupon he obtained a summons calling upon the petitioner to show cause why the petition should not be taken off the files, on the ground that the petitioner had been guilty of corrupt practices during the election. After the argument of counsel the learned Chief Justice gave judgment as set out in the head note.

The case is reported in 4 App. R. 420.

DUFFERIN.

BEFORE CHIEF JUSTICE MOSS AND MR. JUSTICE ARMOUR.

ORANGEVILLE, 9th December, 1879.

JAMES SLEIGHTHOLM, *Petitioner*, v. JOHN BARR, *Respondent*.

Admission of Counsel.—Corrupt practices and other illegal acts.—

R. S. O., c. 10, s. 159.

The respondent was elected by a majority of 261, and at the trial counsel for the respondent admitted that there was evidence capable of being produced which would have the effect of avoiding the election under R. S. O., c. 10, s. 159: and the Court on such admission declared the election void.

The petition contained the usual charges of corrupt practices. The respondent had been declared elected by a majority of 261.

Mr. McCarthy, Q.C., and Mr. P. M. Barker, for petitioner.

Mr. Hodgins, Q.C., and Mr. D. L. Scott, for respondent.

After the reading of the petition, counsel for the petitioner stated that he did not propose to offer evidence of corrupt practices by the respondent. But he was in possession of evidence which would show that acts had been committed by those for whom the respondent was responsible, as his agents, in the legal signification of the term, both in character and number sufficient to avoid the election under the Ontario Act (R. S. O., c. 10, s. 159).

Counsel for the respondent then stated that from the instructions given to him, he had to say that there was evidence capable of being produced which would have the effect of avoiding the election.

The section of the Election Act (R. S. O., c. 10, s. 159) is as follows: "To prevent the expense and trouble of new elections when unnecessary and useless, in case of a corrupt act or acts being committed by an agent without the knowledge and consent of the candidate, if the corrupt act or acts was or were of such trifling nature, or was or were of such trifling extent, that the result cannot have been affected, or be reasonably supposed to have been

affected, by such act or acts, either alone or in connection with other illegal practices at the election, such corrupt act or acts shall not avoid the election."

MOSS, C. J. O.—We declare the election void. We will report to the Speaker that the election ought to be set aside, but that corrupt practices have not been proved to have been committed by the respondent. The petitioner is entitled to the general costs of the cause.

(13 *Journal Legis. Assem.*, 1880, p. 7.)

SOUTH WENTWORTH.

BEFORE CHIEF JUSTICE MOSS AND MR. JUSTICE GALT.

HAMILTON, 7th to 10th November, 1879.

TORONTO, 29th December, 1879.

SAMUEL NASH OLMSTEAD *et al.*, *Petitioners*, v. FRANKLIN
METCALF CARPENTER, *Respondent*.

Voters' Lists Finality Act — Particulars — Right to vote — Torn ballot — Marking ballots.

Particulars for a scrutiny of votes were delivered by the respondent objecting to certain voters, as (1) aliens ; (2) minors ; (3) not owners, tenants or occupants of the property assessed to them ; and (4) farmers' sons not residing with their fathers upon the farm, as required by law. On a motion to strike out such particulars :

Held, that under the " Voters' Lists Finality Act" (41 Vic., c. 21, s. 3), the legality of the votes so objected to could not be inquired into, and that the particulars should be struck out.

Held, further, that the effect of the said Act was to render the Voters' Lists final and conclusive of the right of all persons named therein to vote, except where there had been a subsequent change of position or status, by the voter having parted with the interest which he had (or by the Assessment Roll appeared to have) in the property, and becoming also a non-resident of the electoral division.

A voter who had inadvertently torn his ballot, and whose ballot was rejected on the counting of votes, was allowed his vote, the evidence proving that no trick was intended for the purpose of showing how he intended to vote.

The Election Act in its enacting part requires ballots to be marked with a cross on any place within the division which contains the name of the candidate. Ballots marked with a straight line within the division, or with a cross on the back, were rejected.

Observations on the difference between the English and Ontario statutes in this respect.

The petition contained the usual charges of corrupt practices, and claimed the seat for the defeated candidate, Nicholas Awrey. The vote at the election, after a recount by the County Judge, was for respondent, 1,231 ; for Mr. Awrey, 1,230 ; majority for respondent, 1.

Mr. B. B. Osler, Q.C., and Mr. Teetzel, for petitioners.

Mr. McCarthy, Q.C., and Mr. Robertson, Q.C., for respondent.

During the proceedings application was made to strike out the following classes of objected votes in the particulars filed by the respondent: Persons objected to as (1) aliens ; (2) minors ; (3) having no interest as owners, tenants or occupants in the land assessed to them ; and (4) farmers' sons not residing upon the farm, as required by law.

The COURT held, that by the Voters' List Finality Act of 1878 (41 Vic., c. 21), they were precluded from inquiring into the legality of the votes included in those lists ; and that the only votes that could be inquired into were those specially excepted by section 3 of the Finality Act. The particulars moved against were then struck out.

A scrutiny of votes took place before the learned Judges, the result of which is set out in the judgment, which was delivered by

Moss, C. J. O.—Of most of the very numerous questions raised upon the petition we disposed during the progress of the trial, and to them it will be unnecessary now to refer.

We reserved for consideration the case of Philip Gage, whose vote was rejected upon the counting of the ballots. This voter, who was a man of intelligence, accustomed to exercise his franchise, and familiar with the mode of using the ballot, through some curious mistake or inadvertence tore the paper in two after putting a cross opposite the name of Mr. Carpenter, and handed the marked half to the Deputy Returning Officer, by whom it was deposited

in the ballot box. It immediately occurred to Mr. Gage that he had made a mistake, and he so stated to the officer, at the same time giving him the other half, and demanded a ballot paper on the ground that he had inadvertently spoiled that which he had received. To this request—correctly, we think—the Deputy Returning Officer refused to accede, for the voter had disabled himself from complying with the conditions prescribed by the statute of returning the original paper. But without laying down any rule of general application, we are of opinion that under the special circumstances proved the vote should be allowed. This was the only torn ballot paper deposited, so that its identity admits of no doubt. There is no question as to the good faith of the voter. His political sympathies were not doubtful; and it would be simply absurd to suspect him of having resorted to a trick for the purpose of showing for which candidate he had cast his vote. We think, therefore, without violating any sound principle, or without opening the door to any dangerous evasion of the principle of securing secrecy, that we can allow this vote.

The next objection made by the petitioner is to the votes of Alva G. Jones and Geo. A. Davis, on the ground of their having treated William Joyce. We decline to disturb their votes, because it has not been proved to our satisfaction that the spirituous liquor was given during polling hours.

The other questions are divisible into three classes:

The first and most important depends upon the construction of the 2nd sub-section of the 3rd section of the Voters' Lists Finality Act, by which it is declared that the certified list shall, upon any scrutiny, be final and conclusive evidence of the right to vote, except as to "persons who at any time subsequently to the list being certified are, or have been, non-resident, either within the municipality to which the said list relates, or within the electoral district for which the election is being held, and who by reason thereof are, under the provisions of 'The

Election Act of Ontario,' incompetent and disentitled to vote." The particular portion of that Act to which reference is made is contained in the 1st subdivision of the 7th section. This does not enumerate any grounds upon which a person shall be incompetent or disentitled, but merely states the necessary qualification, which for our present purpose is that he shall be, at the time of the election, either an actual *bona fide* owner, tenant or occupant of real property of certain value, for which he has been entered upon the roll, or in case he has ceased to be such owner, tenant or occupant, a resident of the electoral district. The judicial construction placed upon this enactment permitted great latitude of inquiry upon the right to vote upon a scrutiny being held. There can be no question it was to prevent this extravagant range of investigation, which reached a culminating point in one memorable instance, the Act of 1878 was passed.

Looking at the whole enactment, the intention of the Legislature seems to be reasonably clear. But we must confess that the particular sub-section now in question does not seem to be happily framed. Indeed, it is scarcely too much to say that it invites the discussion which it has received. It does not appear to us to be possible to apply to it any rule of minute verbal criticism; such a test it obviously will not stand; but keeping in view the discernible object of the Legislature, we think its effect is to render the Voters' List final, except where there has been a subsequent change of position, by the voter having parted with the interest which he had—or by the Assessment Roll appeared to have—in the property, and becoming also a non-resident of the electoral division. Where there has been no change of his *status* there is no room for opening an inquiry. The result of this decision is to leave the position of the contestants for the seat unaffected.

The second class of cases reserved is that of voters who chose to mark their ballot papers with a straight line, instead of anything approaching to the form of a cross, opposite the name of a candidate.

The decisions in our Courts upon the provisions of the Dominion Act, which do not appear to be distinguishable, are against the validity of such votes. But it is urged that these decisions are irreconcilable with and should be treated as overruled by the judgment of the Court of Common Pleas in England, in *Woodward v. Sarsons* (L R., 10 C. P. 746).

We are much impressed with the force of Mr. McCarthy's argument upon this point; but, upon consideration, we do not think it can be sustained. The judgment of the English Court proceeded upon the ground that the making of a cross was merely directory and not mandatory. There is no reference to a cross in the enacting part of the Imperial Statute, but it makes its appearance, for the first time, in the instructions for the guidance of voters.

It is in fact simply given as the appropriate mode for the voter indicating his choice. In our statute it is very different. It is expressly enacted that the voter shall mark his ballot in the manner mentioned in the direction by placing a cross on the right hand side, opposite the name of the candidate for whom he desires to vote. The natural and obvious meaning of this language is, that he must make a cross to signify his choice. The whole policy of securing secrecy precludes the suggestion that the voter is at liberty to make any mark he pleases; and the Legislature has therefore prescribed a kind of mark which is the easiest and most familiar—that indeed which is used by the illiterate.

In view of the difference between the English statute and ours, we do not feel at liberty to refuse to follow the decisions of our own Courts.

We may observe that this conclusion seems to be justified by the amending Act of 1879, which enacts that a voter may mark his ballot paper with a cross, either (as heretofore) on the right hand side opposite the name of the candidate for whom he desires to vote, or any other place within the division which contains the name of the candidate.

While removing the objection as to the precise position of the mark in the compartment, this seems to insist upon its form being retained. As this was the view taken by the learned Judge of the County Court, our decision upon this point does not affect the result of the scrutiny.

The third class is that of voters who have from some strange perversity put a cross upon the back of the ballot paper only.

We are of opinion that this mode of marking is not sanctioned by the statute, and we disallow these votes, the effect of which is to strike off one vote from Mr. Carpenter and two from Mr. Awrey.

The result of our judgment is as follows: The respondent had upon the recount a majority of one; to this we have added the vote of Philip Gage, and from it have struck off one vote, on the ground that the mark was endorsed on the ballot instead of being made on its face; and we disallowed on various grounds, during the progress of the trial, twelve votes.

This would have placed respondent in a minority of eleven. But we struck off from Mr. Awrey's total three votes during the trial, and two are now disallowed by reason of the marks being endorsed.

During the trial, however, we added three votes to his number. On the whole, therefore, we give him upon the scrutiny a majority of nine.

We find that Nicholas Awrey was duly elected; and that no corrupt practice was proved to have been committed by or with the knowledge and consent of either of the candidates, and there is no reason to believe that corrupt practices extensively prevailed at the election.

While unseating Mr. Carpenter, we are satisfied that he conducted the contest with the utmost propriety and fairness, and that there is no pretext with charging him with the slightest violation of the law.

STORMONT (2).

BEFORE CHIEF JUSTICE MOSS, AND MR. VICE-
CHANCELLOR BLAKE.

CORNWALL, 2nd December, 1879.

EDWARD EMPEY *et al.*, *Petitioners*, v. JOSEPH KERR,
Respondent.

*Disqualification of an agent for corrupt practices, R.S.O., c. 10, ss. 164,
174, 175.*

The election having been declared void on account of the corrupt practices of an agent of the respondent, the Judges acting as a Court for the trial of illegal acts committed at the election, after notice to such agent, granted an order for the punishment of such agent by fine and disqualification.

The petition in this case contained the usual charges of corrupt practices.

The majority for the respondent at the election was 11.

It appeared from the evidence of one John M. Campbell and others, that a number of voters had been bribed to vote for the respondent.

At the close of the evidence, and after the argument of

Mr. Bethune, Q.C., and Mr. A. F. McIntyre, for petitioner,
Mr. Hector Cameron, Q.C., Mr. Bergin and Mr. Whitney,
for respondent,

The COURT held that corrupt practices had not been established against the respondent personally; that the agency of Campbell had been established; that he (Campbell) had been guilty of corrupt practices, and that the result of the election had been affected thereby. The election was thereupon declared void.

Mr. Bethune then moved for a summons, under R.S.O., c. 10, ss. 174, 175, calling upon John M. Campbell to show cause why he should not be punished pursuant to s. 164, by fine and disqualification.

Mr. Cameron thereupon appeared for *Campbell*, and admitted that he could not deny that he had been guilty of wilful and corrupt bribery and corrupt practices, and that he must therefore be disqualified.

The COURT thereupon granted the order.*

* The form of conviction settled by the Judges in the *Lincoln case* (ante p. 489) is as follows :

Be it remembered, that from evidence given before us, the Honorable Christopher Salmon Patterson, and the Honorable Samuel Hume Blake, two of the Judges appointed for the trial of election petitions at the city of St. Catharines, in the county of Lincoln, on the twelfth day of September, in the year of our Lord one thousand eight hundred and seventy-six, at the trial of an election petition, wherein Alexander Hutchinson and Nathan Henry Pawling were petitioners, and John Charles Rykert was respondent, and whereby the said petitioners alleged that the said respondent was not duly elected as a member of the Legislative Assembly of the Province of Ontario at the election for the electoral division of the county of Lincoln, holden on the eighteenth and twenty-fifth days of February, in the said year of our Lord one thousand eight hundred and seventy-six, John Junkin, a person not a party to the said petition, appeared to have committed a corrupt practice against the form of the statutes in such case made and provided, by giving or agreeing to give, and offering or promising, a sum or sums of money or other valuable consideration, and promising or endeavoring to procure money or other valuable consideration, or discharge or release of rent then due by one Arthur Belcher or one Anne Belcher, to the said Anne Belcher (wife of the said Arthur Belcher), or on behalf of the said Arthur Belcher, in order to induce the said Anne Belcher to procure the vote of the said Arthur Belcher at the said election, or to procure or induce the said Arthur Belcher to vote for the said respondent at the said election, or to refrain from voting.

And the said John Junkin was charged with the said corrupt practice upon the said evidence before us the said Judges, whereupon we ordered the said John Junkin to be summoned to appear at Osgoode Hall in the city of Toronto, on Thursday the fourteenth day of December in the said year one thousand eight hundred and seventy-six, at noon, before the Court for the trial of all illegal acts committed during the said election, to show cause why he should not be adjudged guilty of bribery pursuant to the statutes in that behalf, in that he the said John Junkin had committed the said corrupt practices ; and the said John Junkin was duly summoned so to appear and to show cause, as has been made to appear to us now sitting as such last mentioned Court in pursuance of the Election Act of 1876, at the time and place aforesaid, by the affidavit in writing of William Davis Swayze, and has neglected or refused to attend in pursuance of such summons ; and thereupon proof having been duly made before us by the said affidavit, that the said John Junkin was duly summoned by the personal service upon him by the said Swayze of the summons issued by us in that behalf, we pronounce judgment in the absence of the said John Junkin. And it appearing to us, the said Judges sitting as such last mentioned Court, from the said evidence, that the said John Junkin is guilty of a corrupt practice, namely, bribery by offering and promising to procure valuable consideration to or for the said Anne Belcher, that is to say, the discharge or release of rent due by her husband the said Arthur Belcher, who was a voter at the said election, in order to induce the said

WEST HASTINGS (2).

BEFORE CHIEF JUSTICE MOSS AND MR. JUSTICE GALT.

BELLEVILLE, 4th and 5th November; 16th and 18th December, 1879.

TORONTO, 29th December, 1879.

THOMAS HOLDEN, *Petitioner*, v. ALEXANDER ROBERTSON,
Respondent.*Corrupt acts affecting the result of the election—R. S. O., c. 10, s. 159—
Onus of proof.*

The majority of the respondent was 337; but it appeared in evidence that two agents of the respondent had bribed between forty and fifty voters; that in close proximity to the polls spirituous liquor was sold and given at two taverns during polling hours, and that one of such agents took part in furnishing such liquor; and that such agent had previous to the election furnished drink or other entertainment to a meeting of electors held for the purpose of promoting the election.

Held, that the result of the election had been affected thereby, and that the election was void.

Per Moss, C. J.—Primâ facie corrupt practices avoid an election; and the onus of proof that they are not sufficient to affect the majority of votes rests upon the respondent.

Anne Belcher to procure the vote of the said Arthur Belcher at the said election.

Therefore, it is adjudged by us that the said John Junkin be convicted, and he is hereby accordingly convicted by us of the said last mentioned corrupt practice.

And we do further adjudge that, under and by virtue of the statutes in that case made and provided, the said John Junkin hath for his said offence incurred the penalty of two hundred dollars, and that during the eight years next after the date hereof he shall be incapable of being elected to and of sitting in the Legislative Assembly of the Province of Ontario, and of being registered as a voter and of voting at any election, and of holding any office at the nomination of the Crown or of the Lieutenant-Governor in Ontario, or any municipal office.

And we do further adjudge that the said John Junkin do pay the said penalty of two hundred dollars to the Sheriff of the county of Lincoln, on or before the fifteenth day of January next, to be by the said Sheriff paid and applied according to law. And if the said sum be not paid to the said Sheriff on or before the said fifteenth day of January next, we adjudge the said John Junkin to be imprisoned in the common gaol of the county of Lincoln until he shall have paid the same.

Dated at Toronto, this fourteenth day of December, in the year of our Lord one thousand eight hundred and seventy-six.

(Signed), C. S. PATTERSON, J. A.
S. H. BLAKE, V. C.

The petition contained the usual charges of corrupt practices, and claimed that the election was void on the ground that the corrupt acts and other illegal practices had affected the result of the election. The candidates at the election were the petitioner and respondent ; and the majority for the respondent was 337.

Mr. J. K. Kerr, Q.C., and the Petitioner in person, for petitioner.

Mr. Hector Cameron, Q.C., for respondent.

During the argument,

The CHIEF JUSTICE remarked, that his reading of the statute was that, *primâ facie*, corrupt practices avoided the election ; and the onus of proof that they were not sufficient to affect the majority rested upon the respondent.

The Judge's notes of the evidence of the principal agents of the respondent, whose acts were held to affect the result of the election, are as follows :

William Sarsfield : I worked for Robertson on the day of the election. Was outside man at the Coleman ward poll. I told Robertson that I must get so and so, and I suppose he understood I was working for him. I was at the poll until the close. I went and got voters, and also took them as they came. I used all my influence for Robertson. I tried to get a man named Maloney to vote. I used every inducement to get him to vote. I gave him \$1 and got it back. I suppose it was not enough money for his vote ; he said nothing about a \$4 or \$5 bill. I told him it was a \$5 bill ; I showed him a \$5, and I then put a \$1 into his pocket ; he went as far as the door, and having examined the bill, handed it back. I was three or four times in Walsh's and McNulty's ; people were in with me each time. We went in to get something to drink. There was drinking there all day back and forwards. I understood it was Mr. Holden's whiskey at Walsh's. Menzies was a supporter of Robertson. I don't know that I saw

any whiskey at McNulty's except Mulhern's flask. I gave T. Harris 50c. to try to get him to vote for Robertson; I promised him \$2 more. He got \$1.85 and three drinks. I had \$40 or \$45 in my pocket that morning. I received \$3 from one party that day. I spent part of the money that day; I can't say how much. I paid people money to go and vote for Robertson. I may have bought five votes more; I will swear I did not buy ten more. I can't say how many I paid after the election; I paid Michael Cahill \$2; I don't remember the name of any other person I paid that day. Burke handed me \$3 on election day; he didn't say what for; I had a small bar account against him. He said nothing as to how the money was to be applied. I drove Robertson's conveyance that afternoon.

Owing to the non-attendance of one of the agents of the respondent when called on his subpoena, the Court adjourned to the 16th December, 1879, when the following additional evidence was given:

John Johnson : I canvassed for Mr. Robertson on the day of the election. I was most of the time in the Murray ward, where there are two or three divisions. I went with some voters I had solicited; Peter Morgan and John Daly. I drove Morgan to the poll in Ontario Street. I spent some money that day—about \$200; I can't say how much on the election. More than \$100; I couldn't say more than \$150; I can't say how much. I also treated. I couldn't say whether there were fifty; I suppose there would be pretty near fifty. I only treated one man whom I knew to be a voter—P. McNulty; the others were young men whom I met on the street. I didn't give more than \$7 to any one voter. I gave from that down to \$1; \$6, \$5, \$4, \$3, \$2, \$1.50. I think they would average about \$2.50. I kept no track. I can't say to how many they were to give \$1. It was my own money. I had received money from Mr. Ashley and Mr. Robertson. I got \$50 from Robertson on the morning of the election; I sent my brother for it to Robertson. I got a cheque the Saturday

before for \$350. The election was on Thursday. I got another \$50, I think, on the Monday before, but I am not sure. I was putting up a building for Mr. Ashley. There was only one of my workmen named McHugh who was paid for his day. He said he would otherwise have gone off to another job. The night before the election I gave some money to electors—two or three; I can't say how many. They gave me to understand that they wanted to spend some money the next day one way or the other. I lent Dick Burke \$7; I let Jemmy Hughes have \$1; I gave James Sheelin \$7.

Cross-examined: I had no conversation with Robertson about the election at any time. I didn't talk with Robertson about any votes, or how they were to be canvassed. The moneys I received were on the building contract. We had no talk that any of this should be spent on the election. I can't tell to how many persons I gave money for the purpose of influencing their votes; I can give no idea. I gave money to twenty, twenty-five or thirty persons. I was present at only one committee meeting; I think Robertson was there. I took no part at that meeting.

Moss, C. J. O.—The petition in this case contains the usual charges of corrupt practices by the respondent himself and by his agents. The majority was 337. There was no proof of corrupt acts on the part of respondent himself, but there was convincing and admitted proof of bribery by at least two persons, namely, Sarsfield and Johnson, who were his agents. Mr. Cameron, counsel for respondent, candidly admitted he could not deny the agency of the former, and the respondent in his evidence stated, "I asked Mr. Johnson to do what he could for me."

I shall have occasion to refer more at length to the evidence hereafter, but for the present it is sufficient to say the result of this petition depends upon the construction to be placed upon the 159th sec. of chap. 10, R. S. O. That section is: "To prevent the expense and trouble of new

elections when unnecessary and useless, in case of a corrupt act or acts being committed by an agent, without the knowledge and consent of the candidate, if the corrupt act or acts was or were of such trifling nature, or was or were of such trifling extent, that the result cannot have been affected, or be reasonably supposed to have been affected, by such act or acts, either alone or in connection with other illegal practices at the election, such corrupt act or acts shall not avoid the election."

By Sarsfield's own admission he bribed at least seven voters; he mentioned two, and stated he might have bought five more. Johnson admitted he had spent \$150 in the purchase of votes—for some he paid \$7 and for others \$1, but he thought the average was \$2.50. This would represent sixty votes; but I gather from his evidence the number was not so large, but would extend to between thirty and forty, so that we have direct proof that at least between forty and fifty voters were bribed by these two agents alone.

It appeared also from the evidence, that in close proximity to one of the polls situate in Coleman Ward, there were two places at which spirituous liquor was given to voters; one of these was kept by a man named Walsh, and the other by a woman named McNulty. It was not satisfactorily shown that the respondent was aware that this was being carried on during polling hours, although shortly after the poll closed he visited McNulty's in company with a person named Mulhearn, who gave him some whiskey out of a flask he had in his pocket. The evidence was not clear that Mulhearn was an agent of respondent's, but it was proved that Sarsfield, an admitted agent, was in both these places. He says himself, "Was in both McNulty's and Walsh's on the day of election perhaps three or four times; parties went in with me each time." Morton, another active supporter of respondent, although not an agent, said, "Was at the poll in Coleman Ward during the day; Mr. Robertson was there and spoke to many people; did not hear him solicit any

person's vote; Sarsfield, Mulhearn, and Morris worked actively for Mr. Robertson; saw people going into and out of Walsh's and McNulty's; was once at McNulty's with Sarsfield; saw probably twenty or thirty people go to the houses; do not know whether Mr. Robertson knew there was drinking going on; should think that anyone there could see that drinking was going on." There were several other witnesses who admitted being in those two places during polling hours, and while the poll was open in their close proximity.

By the 151st section, "No candidate for the representation of any electoral district shall, nor shall any other person, either provide or furnish drink or other entertainment at the expense of such candidate or other person to any meeting of electors, aforesaid, for the purpose of promoting such election, previous to or during such election, or pay, or promise or engage to pay, for any such drink or other entertainment, except only that nothing herein contained shall extend to any entertainment furnished to any such meeting of electors by or at the expense of any person or persons at his, her or their usual place of residence." By the 11th sub-sec. of sec. 2 of the Election Act of Ontario, any violation of this 151st sec. is declared to be a corrupt practice.

It is plain from the evidence that the liquor dispensed at these two places was not provided at the expense of either Walsh or McNulty, but by some other persons, consequently was a corrupt practice under the 11th sub-sec. of sec. 2, above referred to; and as it has been shown that Sarsfield took part in furnishing this liquor to voters, the respondent must be held responsible, so far as the result of this petition is concerned, for such acts of his agent.

It was also strongly urged by Mr. Kerr that there was a contravention of this provision on two other occasions, or perhaps three, namely: one, or perhaps two, at the hotel kept by Sarsfield, and another at the residence of Mr. R. S. Young. I think, as respects the meeting at Mr. Young's, there was nothing objectionable; it was clearly within the

exception, being furnished at his own expense and at his usual place of residence. I confess I did not attach much importance during the trial to the meeting or meetings held at Sarsfield's, for the reason that, until Mr. Kerr referred to the interpretation clause, I considered a contravention of the 151st section in the light rather of a forbidden than a corrupt practice, but a consideration of his argument has satisfied me I was mistaken. Moreover, I looked upon what took place on those occasions as of such a trifling nature as not to have affected the result of the election; but I was much impressed with his contention that when we are called upon to decide on the effect which a number of illegal acts may have had on that result, we can exclude none from our consideration. It is plain the meeting in question was held "for the purpose of promoting the election previous to such election," and also that persons who were agents of the respondent were present and furnished drink and entertainment to the persons then taking part in the proceedings; it is therefore clear there was an infringement of the law. There were also two cases of personation proved, but it was not shown that this violation of the law was done by persons for whose actions the respondent is responsible; still they cannot be overlooked when we are called upon to decide whether "the corrupt act or acts was or were of such trifling nature, or of such trifling extent, that the result cannot have been affected, or be reasonably supposed to have been affected, by such act or acts, either alone or in connection with other illegal practices at the election."

We find, then, that there were between forty and fifty cases of bribery, a large amount of indiscriminate treating close to one of the polling places—one at a large meeting the evening before the polling day—which treating was a corrupt practice under the 11th sub-section of section 2 of the Election Act, and two cases of personation.

Thus there are instances of almost every corrupt practice forbidden by the Election Law.

We feel it impossible to say that such numerous illegal

practices cannot be said not to have affected the result of the election, nor be reasonably supposed not to have done so. If the present return can be supported, owing to the large majority of 337, that would be to determine that in any case in which the successful candidate has a large majority it is useless to complain of any infringement of the law unless corrupt practices can be brought home to the candidate personally.

We find that the election of Alexander Robertson was void for corrupt practices by his agents ; and we declare the election void, and order the costs of this petition to be paid by him.

(13 *Journal Legis. Assem.*, 1880, p. 7.)

DOMINION ELECTIONS, 1874.

CORNWALL.

BEFORE CHANCELLOR SPRAGGE.

CORNWALL, 3rd to 7th September, 1874.

DARBY BERGIN, *Petitioner*, v. ALEXANDER F. MACDONALD,
Respondent.

*Common Law of Parliament—Corrupt practices—Acts of agency—Agents
—Sub-Agents—Costs.*

The common law of England relating to Parliamentary elections is in force in Ontario, and applies to elections for the House of Commons.

The Parliamentary law of agency is a special law, and is different from the ordinary law of agency. In Parliamentary elections the principal is liable for all acts of his agent, even where such acts are done contrary to the express instructions of such principal.

Mere canvassing of itself does not prove agency, but it tends to prove it. A number of acts, no one of which might in itself be conclusive proof of agency, may, when taken together, amount to proof of such agency.

Persons who canvassed and went to meetings with the respondent, and attended meetings to promote the election, at which meetings the respondent attended; and persons who canvassed with and introduced voters to the respondent, called meetings and appointed canvassers, and did other acts to further the election, and examined the results of the canvass, were held to be agents of the respondent; and corrupt practices committed by them, and by sub-agents appointed by them, avoided the election.

If a meeting of electors assembles and has the sanction of the candidate, such candidate is responsible for its acts and the acts of the agents appointed by it.

But where the meeting is large, then all present cannot be considered as agents; only those to whom certain duties, either as a committee or as individual canvassers, are assigned.

Bribery is not confined to the actual giving of money. Where a grossly inadequate price has been paid for work or for an article, it is clearly bribery.

A large sum of money, averaging \$3 per head, had been spent by two of the agents of the respondent, and money had been given by them to parties without any instructions:

Held, that where such money had been applied improperly, it must be considered that it was intended to be so applied.

Various acts of bribery and of colorable charity having been proved against the agents and sub-agents of the respondent, the election was set aside, with costs, including the costs of the evidence on the personal charges against the respondent.

The petition contained the usual charges of corrupt practices, but the seat was not claimed by the petitioner,

who was the unsuccessful candidate. The evidence affecting the election is referred to in the judgment.

The election took place on the 22nd and 29th January, 1874.

Mr. Bethune and Mr. A. F. McIntyre for petitioner.

Mr. R. A. Harrison, Q. C., Mr. D. B. Maclellan and Mr. H. S. Macdonald, for respondent.

SPRAGGE, C.—The inquiry divided itself into two branches. 1st. That relating to the question of agency. 2nd. That relating to the commission of corrupt practices.

With reference to the question of agency, the contention of the counsel for the respondent, that what is known as the common law of Parliament does not apply to elections to the House of Commons, cannot, in my opinion, be supported. It would be more accurate to refer to this law as the common law of England relating to Parliamentary elections; and in the absence of any expressed intention to the contrary, it must be held to come within the provincial enactments introducing generally the common law of England. *Reg. v. Gamble & Boulton* (9 U. C. Q. B. 546) is an authority in support of this view.

The law of agency as regards Parliamentary elections is not the ordinary law of agency, but a special law. The usual rule is, that where an agent acts contrary to his instructions, the principal is not bound; but in parliamentary agency it is different, for there the principal is liable for all acts of the agent whatsoever, even though they be done contrary to his express instructions. *Bewdley case* (1 O'M. & H. 16).

As to the evidence of agency, mere canvassing of itself does not prove agency, but it tends to prove it. An act, however trifling in itself, may be evidence of agency; and a number of acts, no one of which might in itself be conclusive evidence, may together amount to proof. It

is hardly necessary to observe that an agent need not be a paid agent.

In this case Mr. D. B. Maclellannan was an agent for whose acts the respondent was responsible. Mr. Maclellannan was instrumental in overcoming the reluctance of the respondent to become a candidate. He acted with the respondent in various matters connected with the election; went to the factories at Cornwall with him; canvassed part of the town; went to the meetings at St. Andrews with the respondent; held meetings for the promotion of the election at his office, at which the respondent personally attended. It was a clear case of agency. Even two or three of these circumstances alone, perhaps even one, without the others, would establish agency clearly. There was no authority from the respondent to Maclellannan to corrupt the constituency, but there was no necessity for this authority in order to render the respondent liable for corrupt acts done by Maclellannan.

The entrusting of large sums of money, as has been done in some cases in England, is only one of the modes of appointing a chief agent, and is not essential to such appointment.

Henry Sandfield Macdonald must also be considered as an agent of the respondent. He canvassed the township with the approbation of the respondent. He drove the respondent through the township and introduced him to voters, and he did not on these occasions accompany the respondent as a mere driver, for the respondent on two or three occasions waited for his convenience, showing that his personal attendance was considered desirable. He took so active a part in the election that he considered himself justified in calling the meetings at St. Andrews. At the first meeting he suggested to those present what should be done to further the election; at the second he examined the results of the canvass. The evidence of agency was very cogent.

I think the general authority given to D. B. Maclellannan and H. Sandfield Macdonald empowered them to employ

sub-agents, for whose acts the respondent would be liable in like manner as for their own acts.

Besides Mr. D. B. Maclellan and Mr. Henry Sandfield Macdonald, the sub-agents appointed by them, and those who were appointed canvassers at the meetings in St. Andrews and in town, must also be considered agents for whom the respondent is answerable.

With reference to the first meeting at St. Andrews, it has been said that it was not regularly convened. Certainly there was less regularity and formality about its calling than is usual in such cases. But this regularity or formality is by no means necessary. If the meeting assembles, and has the sanction of the candidate, this is sufficient to render the candidate liable for its acts, and those of agents appointed by it. The object of the meetings at St. Andrews was to secure a canvass of the township, not merely to discuss election matters.

Where the number of those present at a meeting is very large, that is a reason why all present should not be considered as being appointed agents. It is clear in this case that the whole 150 or 200 present at the meeting were not appointed agents; certain of them only were requested to canvass their neighborhoods, and, to use the words of a witness, "to interest themselves in the election." It is these persons alone who can be considered as agents. It is immaterial whether a committee be formally or informally appointed. It is sufficient if certain duties be assigned to its members and the candidate sanction this assignment of duties. Here the respondent drove out to the meetings with Mr. D. B. Maclellan, one of his chief agents. He was present during the meetings, and was there undoubtedly to further his own election. He cannot be considered as a mere spectator. Being present at the meetings, he must be presumed to have been cognizant of all that was done, and therefore must be considered as having acquiesced in all that was done. Even if the respondent had not been present himself, the presence of his chief agents, Maclellan and Henry Sand-

field Macdonald, would have rendered him liable for the action of the meeting. We must not look at the form but at the substance of what took place. And I think that the canvassers appointed at the St. Andrews meetings must be considered as agents for whom the respondent is responsible. The *Westminster case* (1 O'M. & H. 89) and the *Wigan case* (*ibid.* 188) do not apply. In those cases the associations were without doubt voluntary.

As to the meetings at Maclellan & Macdonald's office in Cornwall, the persons who attended those meetings must be deemed agents of the respondent. These persons examined the voters' lists, appointed canvassers, and received reports of his canvass. The usual formalities, as to calling together the meetings, and the transaction of business, appear to have been observed, but this was unnecessary. The respondent acquiesced in the acts done. *Taunton case* (1 O'M. & H. 185-6); *Coventry case* (*ibid.* 107).

As to the second branch of the case, namely, that relating to the commission of corrupt practices, these consist principally of acts of bribery. Bribery is not confined to the actual *giving* of money. Being an unlawful act, it is to be expected that attempts will be made to conceal it from the light of day. The courts, therefore, have always examined the various acts connected with the transaction, to see whether there is a corrupt motive. Where a grossly inadequate price has been paid for work, or for an article, it is clearly bribery. And in the present case several instances of such bribery occur. In considering the question of corrupt practices as affecting any particular election, we should also examine the whole evidence carefully to ascertain the mode and spirit in which the election contest has been carried on; whether it has been on the whole pure and free from corruption, or whether there has been a general laxity of principle and evident disregard of the law. When the corrupt acts are isolated much greater strictness of proof will be required.

One thing that strikes me in this case is the large sum expended by the two chief agents of the respondent, a sum averaging about \$3 a head for the votes polled for the respondent.

Large amounts were also paid without any express directions as to their application, amounts which would not be required for any legitimate use. In the case of Donald Miles McMillan, for example, the words used upon the money being handed to him were, "Here, you may require it." If this money were applied improperly, it must be considered that it was intended so to be applied.

Again, when H. Sandfield Macdonald, having "heard that the north-west corner was corrupt," gave \$140 or \$150 to George McDonald, of Moulinette, to expend there, without any directions as to the mode of expenditure, the only inference must be that it was to be expended in order to corrupt. This inference is supported by the statement of George McDonald, who, on being asked why he accepted the money, replied that he was apprehensive "that the other side were going to bribe," which implies that he considered his side should do so as well.

There were many similar cases in which considerable sums of money were paid without directions as to the application, but it is unnecessary to dwell upon these further than for the purpose of showing the general spirit in which the contest was carried on on behalf of the respondent. In the case of Gilbert Runions, bribery with the knowledge and consent of Henry Sandfield Macdonald, one of the chief agents of the respondent, is proved.

Henry Sandfield Macdonald, when he handed the money to George McDonald, named Runions as a person to whom money should be given; and the money was paid to Runions by G. McDonald, as Runions admits. This is the same as if H. S. Macdonald gave it himself.

The evidence of George McDonald and that of Runions differs as to the amount paid, but this is immaterial—money was paid.

In other cases Henry Sandfield Macdonald left the giving of the money to George McDonald "on discretion." This was a direct appointment of George McDonald as agent. And in exercise of this discretion, George McDonald bribed Cannon and the two Worleys.

The payments by Donald Miles McMillan to the Clines and to Murray are other instances of bribery. In the case of the Clines, McMillan paid money to them, or, as he afterwards says, to one of them, nominally for the purchase of oats, but at the time of the alleged purchase no quantity of oats was named, no time for delivery was specified, no receipt for the money was taken, and no oats have, as a matter of fact, been delivered; the alleged purchase was undoubtedly a mere colorable proceeding. The fact that the Clines and Murray declared their intention to vote for the respondent does not affect the case.

Again, the payment of \$10 to Alguire by Henry Sandfield Macdonald falls within the rule of inordinate and excessive payment. Where \$4 or \$5 would have been sufficient, the excess must be considered as given for some other purpose, which purpose was "corrupt."

The payment of \$50 to the Rev. Mr. Smith, I think, falls within the rule as to "colorable charity," or "colorable liberality," referred to in the cases, and was therefore given with a corrupt motive.

With reference to the loans of small sums to various persons, we must of course take into consideration that the firm of Maclellan & Macdonald was in the habit of lending small sums. But the lending of various sums, amounting to \$210, at 6 per cent., is certainly suspicious, since it is admitted by Mr. Macdonald that the current rate was 8 per cent., and no reason is given why 6 per cent. only was asked. I think the reasonable inference must be that the loans were made with a view to the election. It is not necessary, however, to lay much stress upon these transactions.

The loan of \$150 to Depuis is very clearly a case of bribery by Duncan G. McDonald, a sub-agent. The loan was for two years, without interest, a note being given to secure repayment. The note was originally drawn payable with interest, but this was changed. Depuis says in his evidence that McDonald "got nothing but my vote for the money." Is not this a stipulation that Depuis should have the loan without interest if he would vote? Was it not a present of the two years' interest?

Again, Morrisette was an active agent. He attended the meetings at Maclellan & Macdonald's office in Cornwall. He examined the voters' lists. He had \$140 entrusted to him. As to the disposition of this money he gives a very confused account, but the promise of \$15 to Fitzpatrick's daughter was clearly an offer of a bribe. He said he would give the money if she got her father to vote, and the offer of a bribe is equivalent to a bribe, although it requires clearer and stronger evidence to support it.

The payment of money by Wood to Aaron Walsh was also illegal. Here the note endorsed by Walsh was paid by him 25 years ago. He considered the payment a hardship, but he does not deny his liability. The fact that the money paid by Wood was not furnished by the respondent or either of his chief agents, makes no difference. The endeavor by Wood to restore friendship was undoubtedly done to influence the vote.

In the case of Alexander McDonald, the exercise of forbearance in pressing the judgment in the hands of Maclellan & Macdonald was evidently with the view of influencing the vote.

These cases of bribery are sufficient to render the election of the respondent void, and I shall only make a few remarks on the other circumstances disclosed in evidence.

The case of Charles Mullins was a very gross case. A stratagem was used in inducing him to get into the sleigh driven by Grant, and in spite of his remonstrances he was driven into the country and thereby prevented from

voting. I consider the conduct of Donald McMillan—justice of the peace, who was present, and knew that an outrage was about to be committed and yet did not interfere—as deserving of the strongest censure. The case is as gross a one as can well be conceived.

As to the hiring of the special train, I think there was no personal impropriety in the case. A mere hiring of a conveyance to carry voters is not an act wrong in itself, and would not be so at all but for the express provisions of the law. And I am inclined to think that the hiring in this instance does not fall within the meaning of the law, and that it is the same as the case of one sending his own carriage.

I am not required in this case to say whether the corruption was so general as that the election should on that account be set aside, but an election may undoubtedly be void on that ground. *Bradford case* (1 O'M. & H. 40).

I exonerate the respondent personally from any complicity in the corrupt acts committed; but I think it my duty to say that I can scarcely conceive that Mr. D. B. Maclellan and Mr. H. S. Macdonald would have acted in the manner in which they appear to have acted at this election if they had appreciated the gravity of the acts committed by them.

My judgment, therefore, is that the election is void. Costs to be paid by the respondent.

I do not think that the fact that the personal charges against the respondent have failed should alter the usual rule that costs follow the event. The expense of the trial has not been increased by these personal charges, and they have not been put in wantonly, in order to wound the feelings of the respondent; if they had been, that might have altered the case. These charges also are usual, and are excusable on the ground that the opposite party is generally ignorant of what is done by the respondent; and in order that evidence affecting the candidate personally may be given, these charges must be made in the petition.

SOUTH RENFREW.

BEFORE CHANCELLOR SPRAGGE.

RENFREW, 9th September, 1874.

WILLIAM BANNERMAN, *Petitioner*, v. JOHN LORN
McDOUGALL, *Respondent*.*Costs—Preliminary inquiry—Excessive expenditure.*

The respondent sought to establish, on an inquiry under a preliminary objection, that the petitioner (the opposing candidate) had been guilty of bribery, and was therefore disqualified as such. The inquiry was not concluded, as during its pendency the English Election Courts held that bribery would not disqualify a petitioner; but so far as the evidence went, while it disclosed such a large expenditure of money by the petitioner and his agents as to lead to the suspicion it was not all expended for the legitimate purposes of the election, it did not show bribery by the petitioner. The respondent then consented to his election being avoided on the ground of bribery by one of his agents without his knowledge or consent:

Held, that the general rule as to costs should prevail, and that the respondent should pay the costs of the inquiry as well as the general costs of the cause.

Seem, if evidence showed that corrupt practices had been committed by a respondent, it would be the duty of the Court so to adjudicate whether the petitioner was willing to withdraw the charge or not.

The petition contained the usual charges of corrupt practices.

The respondent set up, by way of preliminary objection, that the petitioner had been guilty of bribery, and therefore had no status as a petitioner. Evidence was taken at Brockville in support of this allegation, and showed a large expenditure of money by the petitioner and his agents at the election complained of. It however became unnecessary to proceed with the inquiry, as, pending the investigation, the English Court of Common Pleas, in the *Launceston case*, *Drinkwater v. Deakin* (L. R., 9 C. P. 626), held that even if bribery were proved against a candidate-petitioner, he was not disqualified as a petitioner.

The trial was then proceeded with at the town of Renfrew.

Mr. McCarthy, Q.C., for petitioner.

Mr. Bethune for respondent.

After the case had been partially heard, the respondent's counsel said after consulting with his client he had found that there was one case of corrupt practice committed by an agent without the knowledge and consent of the respondent, but for which the respondent was responsible to the extent of his seat, and which would avoid the election; but he did not admit any act of personal bribery.

Counsel for the petitioner then stated he would not press the charges of personal bribery, and would accept the avoidance of the election.

SPRAGGE, C.—The case at present does not show any personal act of corrupt practice on the part of the respondent. If I thought it did, I should feel it my duty so to adjudicate, whether the petitioner was willing to withdraw his charge on that head or not. But the question of costs still remains to be settled.

Mr. Bethune contended that as far as the preliminary objection is concerned, there was ground for the inquiry, as it was proved in Brockville, by petitioner's own evidence, that there had been spent of his and his partner's money about \$3,600, making an average of \$6 for each vote cast for petitioner. The Election Court at Toronto have acted on the rule of giving no costs to either party in interlocutory proceedings, as the law was unsettled in this respect. On these grounds he asked that each party should pay their own costs of the preliminary objection.

Mr. McCarthy contended the inquiry at Brockville was not concluded, and it was not known whether the charges against the petitioner were true or false. It would be contrary to every principle to assume the petitioner guilty before the investigation was determined, and in effect to punish him as in the way the respondent asks, by depriving him of his costs. But had the investigation closed, and petitioner's status not been affected, he would, of course, have been entitled to his costs. It was not prosecuted, because the respondent discovered, after setting

up the preliminary objection, that as a matter of law, even if true in fact, it was insufficient. It would be an extraordinary result, that a party pleading, as it were, a special defence, which he admitted was bad in law, and which had not been proved in fact, should be relieved from the costs of the proceedings. According to the *Southampton case* (1 O'M. & H. 221 to 225), it appears that the successful establishment of a recriminatory case does not debar the petitioner, even when he is the candidate, from prosecuting the petition so far as unseating the sitting member, but only prevented the unsuccessful candidate from being seated, and here the seat was not claimed.

SPRAGGE, C.—It is conceded by the learned counsel for the respondent, that as to the general costs there is nothing to take the case out of the ordinary rule, that the costs follow the event; but he contends that an exception should be made in regard to the costs of the inquiry which took place upon the preliminary objection of the respondent, that the status of the petitioner was annihilated by reason of his being guilty, as was alleged, of personal bribery. It is conceded now that this preliminary objection was untenable as a matter of law, but it is urged that this was an unsettled point when the exception was taken and the inquiry had, and that the evidence showed that there was probable ground for the objection.

The evidence was taken before me, and having the evidence here, and having again read it over, it appears from it certainly that the expenditure of money by the petitioner and his agents was very considerable—so considerable as to leave room for the suspicion that it was not all expended for the legitimate purposes of the election. But what was charged went beyond this—it was a charge of personal wrong on the part of the petitioner, which, however, was not established.

There have been cases where the usual rules have been departed from, but these cases, however, are few, and the

general rule is now rarely departed from, unless under very exceptional circumstances. In this case, at any rate, they do not appear to apply, and never have been applied to such a case as this.

These costs have been incurred in an inquiry, not upon the merits of the petition, but at the instance of the respondent to intercept an investigation into the merits of the petition on the ground of demerit in the individual by whom the petition was presented, and it is now conceded that the petitioner rightly succeeds.

This is not a case, apart from the question of law, in which a party can properly claim exemption from the general rule. I do not say what might have been the case if a clear case of personal bribery had been made out against the petitioner. It might have been proper to refuse him costs in that case, but such a case has not been made out. The preliminary objection was wrong in point of law. Its purpose to intercept inquiry does not commend it as a proper proceeding, and it was deficient in proof of the fact alleged.

My opinion, therefore, is that these costs should not be excepted from the general costs to be paid by the respondent.

(9 *Commons Journal*, 1875, p. 4.)

LONDON.

BEFORE CHIEF JUSTICE HAGARTY.

LONDON, 7th to 10th September, 1874.

GEORGE PRITCHARD, *Petitioner*, v. JOHN WALKER,
Respondent.

Excessive expenditure—Bribery—Circumstantial evidence—Respondent's disclaimer of corrupt practices—Agency—Appeal—37 Vic., c. 10, s. 35—Disqualification of respondent.

The evidence showed that extensive bribery was practised by the agents of the respondent and by a large number of persons in his interest, but no acts of personal bribery were proved against him, and he denied all knowledge of such acts. It was in evidence that he had warned his friends, during the canvass, not to spend money illegally.

The Judge (*dubitante*) held that no corrupt practice had been committed with the respondent's knowledge or consent, and avoided the election for corrupt practices by the respondent's agents.

On appeal to the Court of Common Pleas, it was

Held, 1. that the circumstantial evidence in this case was sufficient to show that corrupt practices had been committed by the respondent's agents with his knowledge and consent.

2. That wilful intentional ignorance is the same as actual knowledge.

3. That the assent of a candidate to the corrupt acts of his agents may be assumed from his non-interference or non-objection when he has the opportunity. And such candidate's knowledge of and assent to the corrupt acts of his agents, may be established without connecting him with any particular act of bribery. (24 C. P. 434.)

The petition contained the usual charges of corrupt practices.

Mr. Robinson, Q.C., and Mr. Street, for petitioner.

Mr. R. A. Harrison, Q.C., and Mr. A. F. Campbell, for respondent.

The evidence disclosed that about \$9,000 were expended by the respondent and his agents at the election. The total vote was 2,477, of which the respondent received 1,269, and Mr. Carling 1,208. The facts of the case are set out in the judgment of Hagarty, C. J., reported in 10 *Canada Law Journal* (1874), p. 281; and in 9 *Commons Journal*, p. 24.

At the close of the evidence, and after the argument of counsel,

The CHIEF JUSTICE declared the election void on the ground of bribery by agents of the respondent, but (*dubitante*) without his knowledge or consent; and he reported that corrupt practices had extensively prevailed at the election.

From the above judgment the petitioner appealed to the Court of Common Pleas under the 37 Vic., c. 10, s. 35, on the ground that upon the law and evidence the learned Judge should have declared the respondent guilty of corrupt practices, and should have found that corrupt practices had been proved to have been committed by and with the knowledge and consent of the said respondent at the said election. The respondent filed a cross appeal.

The COURT held that the circumstantial evidence set out in the case was sufficient to show that corrupt practices had been committed by the agents of the respondent and with his knowledge and consent, notwithstanding his disclaimer. That wilful intentional ignorance is the same as actual knowledge. That the assent of a candidate to the corrupt acts of his agents may be assumed from his non-interference or non-objection when he has the opportunity, and that it is sufficient to establish such candidate's knowledge of and assent to the fact that his agents used bribery to procure his election without connecting him with any particular act of bribery.

The judgment of the Court is reported in 24 C. P., 434.

(9 *Commons Journal*, 1875, p. 24.)

WEST NORTHUMBERLAND.

BEFORE CHANCELLOR SPRAGGE.

COBOURG, 25th and 26th September, 1874.

WILLIAM LEMUEL BURNHAM *et al.*, *Petitioners*, v.
WILLIAM KERR, *Respondent*.

Respondent's admission of corrupt practices by agents—Inquisitorial proceedings—Costs.

The respondent, a week before the trial, served a notice on the petitioner admitting bribery by one of his agents, and notifying the petitioner not to incur further costs. At the trial the respondent, pursuant to the notice, gave evidence of bribery by an agent, which the Court held sufficient to avoid the election. The petitioner then contended that he had a right to show that corrupt practices had extensively prevailed, and that the respondent had been personally guilty of corrupt practices.

Held, that the functions of the Court were judicial and not inquisitorial, and that no further evidence should be received on the issue as to the avoidance of the election on account of bribery by agents. But if incidentally it should appear, in the inquiry as to the personal charges against the respondent, that corrupt practices extensively prevailed, the same would be certified in the report to the Speaker.

The petitioners then examined witnesses on the personal charges, which were not proved, and in determining the question of costs, it was

Held, that as the petitioners might have come to court on the notice served by the respondent, and have asked to have the election set aside, and as they had attempted, but had failed, to establish the personal charges, the respondent should only pay such costs as he would have had to pay had the petitioners accepted the notice served upon them before the trial.

The petition contained the usual charges of corrupt practices. Particulars were served by petitioners of over one hundred personal charges against respondent. Prior to the trial, and on the 19th September, the respondent caused the following notice to be served on the petitioners' solicitors:

"Take notice, that on the trial of this petition, the respondent will admit the following facts, that is to say: That a person who, according to the common law of England in reference to the election of members of Parliament, would be held to be an agent of the respondent at the said election, did, before the said election, give a sum of money to a voter to induce him to vote for the respondent, but that this was done without the knowledge and consent of the respondent.

“ And further take notice, that in so far as the petitioners seek to void the said election on account of the acts of agents of the respondent, the respondent will, if the petitioners incur any further expense or protract the trial of the said petition in so far as corrupt practices by agents are concerned, ask that the petitioners pay any costs which may hereafter be incurred.

“ And further take notice, that the respondent is ready and willing, and hereby offers, to cause to be served, at his expense, notices of countermand of the subpoenas served upon witnesses in so far as corrupt practices by agents is concerned, in order that the conduct money paid to the said witnesses may be returned by them to the petitioners, and in default of the petitioners countermanding the services of the said subpoenas, the respondent will claim to be relieved of the expense of the attendance of the said witnesses at the trial of the said petition.

“ And further take notice, that the respondent denies that he was personally guilty of any corrupt practice whatever at, before, or after the said election, or that any corrupt practice was committed at, before, or after the said election on his behalf by or with his knowledge and consent.

“ And take notice, that if the petitioners further insist upon the said charges of personal corrupt practices against the respondent, the respondent will at the trial claim to be relieved from the payment of the costs of the petition, which may be incurred in consequence of the petitioners further pressing the said charges.”

The petitioners served no counter notice, but proceeded to trial.

Dr. McMichael, Q C., for petitioners.

Mr. Bethune for respondent.

At the opening of the court, counsel for the respondent proved service of the notice, and contended that after the notice it was not necessary for the petitioners to pro-

ceed further, as the Court would not act as a court of inquisition; and this notice was equivalent to the withdrawal of the plea in a *Nisi Prius* record, or of the answer of a defendant in Chancery. He referred to the *Southampton case* (1 O'M. & H. 227); Rogers on Elections, 12th Ed., p. 355; *Glengarry case* (*ante*, p. 8); Brough on Elections, 20; *Guilford case* (1 O'M. & H. 15); Leigh & Le Marchant, 123. He admitted the election was void on account of bribery by an agent without the knowledge of the respondent.

The CHANCELLOR: I will require evidence of the particular case of bribery by the agent.

The respondent then called a witness who was admitted to be an agent of the respondent, and who proved an act of bribery.

The CHANCELLOR held that sufficient evidence had been given, and that the election must be declared void.

Dr. McMichael, for the petitioners, contended that under 36 Vic., c. 28, s. 20, he should be allowed to give evidence that corrupt practices extensively prevailed at the election. The petition so states, and in the interests of public morality and public policy the petitioners should be allowed to go on and have a full inquiry.

The CHANCELLOR ruled that he would follow the decisions of Willes, J., in the *Windsor case* (1 O'M. & H. 6), *Guilford case* (*ibid.* 15), and *Southampton case* (*ibid.* 227); and Grove, J., in the *Taunton case* (2 O'M. & H. 74), and *Wakefield case* (*ibid.* 103). The functions of the Court are judicial and not inquisitorial; and any evidence to try the issues would be received, but not in any way contrary to the rulings of the learned Judges referred to. If incidentally, in the course of the inquiry as to the personal charges, it appeared that corrupt practices had extensively prevailed at the election, he would certify that fact in his report to the Speaker.

The personal charges against the respondent were then proceeded with—the petitioners examining 36 witnesses in support of the charges. After the argument of counsel, the following judgment was delivered. .

SPRAGGE, C.—The case involved among other things serious charges against the respondent, and may be divided into three branches. 1st. A charge that there had been such bribery by agents without the knowledge of the respondent as would void the election. 2nd. Such corrupt practices as, under sec. 18 of the Act of 1873, would disqualify the respondent personally. 3rd. Extensive corrupt practices, which should be certified under sec. 20, sub-sec. c. As to this latter point I am unable to certify on the evidence before me that extensive corrupt practices had prevailed, under sub-sec. c. of sec. 20 of the Act of 1873.

With reference to the first branch, I consider the notice given by the respondent on the 19th of September was sufficient to render it unnecessary for the petitioner to prove a case merely for avoiding the election. It was put in a technical form and couched in the language used by judges in similar cases. If the petitioners sought nothing more than to avoid the election, they were safe in coming into court without further evidence. When the point of going farther was raised it was a new one, but I considered that the cases had decided that the Court was not one of inquisition. This was not a question between the parties—it was a question of public policy for the discretion of the Court. I had asked, when the matter was pressed upon me, *cui bono*? In the English cases the Judges decided whether they would or would not go further after the issue was proved. The language of the Act of 1873 showed that the Legislature here had also made a distinction. Besides, it is not apparent that it would be wise or right to go into the inquiry. There was no grievance to the petitioners; it is no more their affair than that of the rest of the Province.

The other question remained as to the personal charges sought to be fastened upon the respondent. It was not attempted to be denied that on this ground the petitioners had a right to go into all the facts to establish their case; and if in doing so evidence of extensive bribery had incidentally transpired so as to require a certificate under sec. 20, sub-sec. c., I would have so certified. In the *Cornwall case* (*ante.*, p. 547), I decided not to certify, and I still consider that I decided rightly. The *Taunton case* (2 O'M. & H. 74) also supported this view.

Then as to the personal charges, it was alleged that there had been such extensive bribery that the respondent either must have known of it or wilfully closed his eyes to it. About \$1,600, not more than \$1,700, appeared by the evidence to have been spent. This by tacit consent was placed in the hands of a gentleman, and he, wisely or unwisely, had hid the amount from the respondent. It was said that the expenditure had been legitimate. Even if the respondent had known of it, it was necessary to prove that it could not, from its amount or otherwise, have been used legitimately. There was not a tittle of evidence to that effect. But it was not necessary to go so far, as the respondent did not know of the amount. If it had been shown that the amount had been so large that the expenditure must have been corrupt, and that the respondent, if he had known it, must have wilfully shut his eyes to the facts, I would have been disposed to hold the respondent responsible; but the facts did not call for that. It was not brought home to the respondent that he knew of more than his own \$250 and his brother's \$300, and that it was likely a further contribution would be made. This was far short of the evidence required to make the respondent personally liable.

Next, as to the other personal charges. Mr. Lachlan's case would have been serious if it could have been supported; but, as Dr. McMichael frankly admitted, it could not. The demeanor of the witness, his unsatisfactory

replies, and the flat contradiction by others of material parts of his evidence, prevent his case having any weight.

As to cases of this nature, I may remark that it would be wise in candidates to refuse to have anything to say to the voters during elections about money matters. There is a tendency during elections to press doubtful claims for settlement. The Court should be satisfied in such cases clearly. Logically, perhaps, if a case were proved, the consequences would follow as stated in the Act; but the Courts do draw a distinction and hesitate longer where the consequences were serious.

I must therefore adjudge that the personal charges have not been proved in such a way as to justify me in reporting them as established. As to what might have been proved, I can only gather that there were cases of suspicion and of bribery incidentally revealed. The respondent at the beginning of the trial admitted one case of bribery by an agent.

This was a law absolutely necessary to be passed. The practice of bribery prevailed throughout the country to a great extent. It was a demoralizing practice to the briber, the person bribed, the constituency, and the candidates. The effect might be, if permitted, to place rich and dishonest men in Parliament, to the exclusion of the honest poorer men. It was a great public wrong and in derogation of the franchise, which had been termed a public trust.

As to costs. The petitioners might have come to court on the notice served by the respondent, and asked to have the election set aside. They did not choose to do so; they went into evidence, but have failed to establish their personal charges against the respondent. They have established cases of suspicion or of imprudence. The costs of this attempt, which is a failure, should not fall upon the respondent. The respondent should pay the costs which he would have had to pay if the petitioners

had taken the course indicated. There should be no costs to the respondent against the petitioners.

(9 *Commons Journal*, 1875, p. 7.)

NIAGARA.

BEFORE CHIEF JUSTICE HAGARTY.

NIAGARA, 20th to 22nd October, 1874.

NEIL BLACK *et al.*, *Petitioners*, v. JOSIAH BURR PLUMB,
Respondent.

*Excessive expenditure—Respondent's disclaimer of corrupt practices—
Bribery—Agents—Sub-Agents—Costs.*

The respondent, in a constituency where 642 persons voted, received 336 votes, and his election expenses were about \$2,000. The money was entrusted by the respondent to one G., with a caution to see that it was used for lawful purposes only. About \$1,200 of this money was given by G. to one W., who distributed it to several persons in sums of \$40, \$100, \$200 and \$250. No instructions as to expenditure were given by G. to W., or by W. to the persons amongst whom he distributed the money; and by the latter several acts of bribery were committed. The respondent publicly and privately disclaimed any intention of sanctioning any illegal expenditure; but made no inquiries after the election as to how the money had been spent until a week or two before the election trial. He denied any act of bribery, direct or indirect, or any knowledge thereof; and no proof was given of a personal knowledge on his part of any of the specific wrongful acts or payments proved to have been committed by the persons amongst whom his money had been distributed.

Held, 1. That under the peculiar circumstances of the respondent's canvass, and on a review of the whole evidence, the respondent's emphatic denial of any corrupt motive or intention should be accepted.

2. That the persons amongst whom the respondent's moneys had been distributed by W., and persons acting under them, were sub-agents of respondent, and that their corrupt acts avoided the election.

Seemle, that no limit can be placed to the number of parties through whom the sub-agency may extend.

The election was set aside with costs, except as to the costs of certain charges which were unwarranted. A party, though successful, is not entitled to the costs of all the witnesses he may subpoena, nor is the fact of them being called or not called the test of such costs being taxable.

The petition contained the usual charges of corrupt practices.

The total vote at the election was 642, of which the respondent received 336, and Mr. John M. Currie 306. The material facts disclosed at the trial are set out in the judgment.

Mr. Hodgins, Q.C., and Mr. Currie, for petitioner.

Mr. Robinson, Q.C., and Mr. O'Brien, for respondent.

HAGARTY, C. J., C. P.—This constituency consists of the town and township of Niagara. Six hundred and forty-two persons voted, and the respondent had a majority of thirty. The respondent agreed to come forward on the 12th January; the polling took place on the 29th of January, 1874. The respondent is chairman of the Steel Works Company, of which Mr. Gunn is secretary and acts as local treasurer. Gunn was appointed on the 1st of January, and only came to reside in Niagara on the 15th of January last. There is no bank agency or express office in Niagara.

On January 26th the respondent sent Gunn to Toronto with a letter to Mr. Gzowski, a stockholder and director of the company. The respondent told Gunn that money would be wanted for the general purposes of the election, and also for his own purposes and for the Steel Works. He had men then at work on his own premises. Gunn presented the letter to Mr. Gzowski, who went with him to the Montreal Bank and spoke to the manager, who then gave Gunn \$1,992.50, and he informed respondent thereof. The latter authorized Gunn to disburse money required for the election, cautioning him distinctly to see that none of the money was used for anything but perfectly lawful purposes, and on several subsequent occasions said the same thing.

The respondent was very busy about the election, and nothing whatever seems to have taken place between them as to the subsequent expenditure. Gunn knew hardly any one in Niagara, and next day, at the suggestion of one Burke and others, handed \$1,200 of this money

to Dr. Wilson, a well-known physician here and respondent's medical adviser, thinking he was the proper person to deposit it with for lawful expenses, taking no receipt. Gunn says he had no idea or intention that the money should be improperly spent. He afterwards paid several hundred dollars more for various expenses—printing, and some very heavy livery bills. He gave \$100 back to respondent, and after paying all the calls upon him, had a balance of over \$100 on hand, which he applied to other matters not connected with the election.

Dr. Wilson admits the receipt of this money, understanding that it was to be used for election purposes, not unlawfully ; and he says he does not know whose money it was. The doctor sent \$250 of this money to one Lowry, in the St. David's division, sending it in an envelope by one Murphy, without any letter or message, simply addressed to Lowry. Murphy swears he gave it to Lowry, not knowing there was money in it. Wilson also gave \$250 to Thomas Hiscott, in the division of Virgil, without any instructions ; and also \$200 to Longhurst, in the remaining (Queenston) division. He also paid \$100 to Thomas Burke, \$40 to J. T. Kerby, for expenses, and small sums to others. One Kennell, a non-elect, was paid \$100 for services, and Wilson returned \$28 or \$29 to Gunn.

Dr. Wilson says he did not intend to use the money for improper purposes, as he is opposed to such. He thought the parties to whom he paid it were responsible persons. He gave no instructions to the persons to whom he gave the money how they were to use it, nor did he ask how it was used. With the money so received, Longhurst, as his evidence shows, committed several clear acts of bribery and disposed of some of the money in a most suspicious way, giving his nephew, a voter, \$60 of it, telling him to do as he liked with it, meaning about the election ; and \$70 to another man, much in the same way, never asking any account of it.

Out of this \$250 given to Lowry he returns \$65. He says he paid one Stuart after the election, for lawful expenses, horse hire, lights and fuel, \$130, but he can tell nothing about whether the claim was real or false, or anything about this man Stuart. Lowry, in my judgment, committed at least one act amounting to bribery in Mrs. Hanniwell's case.

In the third case, that of the money given to Hiscott, for the Virgil division, one Walter Thompson says that he found \$250 in an open box in his stable. Just before he saw Hiscott standing in the road, and no doubt the latter placed it there. This money Thompson divided among five or six people the night before the polling, telling them to go to work at once. He made no inquiry how it was spent, nor was any attempt made to prove that it was spent honestly.

Bribery was also committed by Robert Best to the extent of \$40, but I do not consider that the respondent was in any way affected by it.

The respondent was examined and gave a full account of his candidature. He said from the beginning he was determined to make or sanction no illegal expenditure, and repeatedly announced this, his resolution, both publicly and privately (in this he is fully corroborated); that this was his first experience in elections, and he had no idea of the costs. There were certain charges made against him as to transactions in Albany, which he found it absolutely necessary to refute publicly before the electors, and in the short space before the polling he spent three days in the United States getting evidence, and had to spend a great deal in printing. There was no local paper or printing office, which caused more expense. His whole expenses, he said, were between \$2,000 and \$2,100, \$1,800 being spent through Gunn. He himself paid a St. Catharines paper for printing in April last \$100, a shorthand reporter \$50, and necessary telegraphing from \$75 to \$100. His personal expenses were under \$5.

He denied any act of bribery, direct or indirect, or any knowledge thereof, and as to treating, he only spent 70 or 80 cents, and that I think was not for any purpose or motive connected with the election. No attempt was made to prove any personal knowledge on his part of any of the specific wrongful acts or payments. He says that until quite lately, in fact the last week or two, he did not believe the petition would be proceeded with, and never, till he found it was really coming to trial, did he make any inquiry as to the charges. He and Gunn both state that it was only within this period that he was made aware how Gunn had disposed of his money. He never suspected or knew that these sums were paid to Dr. Wilson, or disposed of by him as proved. He accounts for his ignorance by stating that he had perfect confidence in Gunn's intelligence and integrity, and having given Gunn explicit instructions not to spend any money illegally, he did not think that anything was wrong; that his cash transactions were very large, and that his general habit was not to close up or balance his accounts till the end of each year, and so he had not yet examined how the cash stood with Gunn. When he discovered the amount that had actually been expended he says he was much surprised, and thought it was altogether too large.

I think the respondent, under the peculiar circumstances of his canvass, has satisfactorily accounted for his not having personally superintended Gunn's expenditure during the election.

On a review of the whole evidence, I see no reason to doubt the respondent's very emphatic denial of any corrupt motive or intention. I accept his declaration that he entered into the contest intending to spend no money illegally, and that he was in no way cognizant of any illegal act.

It remains to be considered whether his election is to be avoided for the undoubtedly corrupt acts of some of his friends.

Assuming for argument's sake that neither Gunn nor Wilson actually intended to violate the law, I cannot conceive how they could have taken any course so calculated to arouse suspicion, and to make what they say was meant to be right appear to be wrong, as the course they did adopt. The respondent trusts Gunn with the disbursing of his moneys. The latter, on somebody's suggestion, hands \$1,200 of it to Dr. Wilson in the vaguest manner, giving no directions, and never inquiring as to its employment. If he made Wilson the paymaster, it is not easy to see why he did not refer parties coming with claims for lawful expenses to Wilson. He paid them himself, without inquiring whether the large sum given to Wilson was or was not exhausted. He never asked for an account from Wilson, but let him do as he pleased. I look upon the relation of both Gunn and Wilson to the respondent in the same light, and I think the latter is as clearly responsible for what Wilson did as if Gunn had done the same act—when Wilson gives to Longhurst (for example) \$200 to use as he might please, about the election, of course in the promotion of respondent's interests. With part of this money Longhurst commits several clear acts of bribery.

My strong impression is that the agency continues under these circumstances, and the respondent's election must be affected thereby. The same might be said in Lowry's case and in Hiscott's, whom Dr. Wilson was pleased to trust with \$250 for the Virgil division, to be expended as he pleased. The placing of it in Thompson's stable, to be found by the latter, can hardly be referable to a transaction intended to be honest; and the subsequent distribution of it by Thompson raises the gravest suspicion that the whole proceeding was intended to be an evasion of the law, and resulted in an illegal expenditure.

If I do not hold the agency to continue in this case, I think I would be, as far as in me lies, rendering a wholesome law inoperative, and opening a wide door to corrupt acts.

The *Bewdley case* (1 O'M. & H. 18), I think, strongly supports this view. Sir Colin Blackburn's judgment is very explicit. There the respondent deposited a large sum in the hands of one Pardoe, directing him in his letter to apply the money honestly, but not exercising, either personally or otherwise, any control over the manner in which this money was spent, etc.; not, in fact, knowing how it was spent. He then says: "I can come to no other conclusion than that the respondent made Pardoe his agent for the election, to almost the fullest extent to which agency can be given. A person proved to be an agent to this extent is not only himself an agent for the candidate, but also makes those agents whom he employs. . . .

An agent employed so extensively as is shown here makes the candidate responsible not only for his own acts, but also for the acts of those whom he, the agent, did so employ, even though they are persons whom the candidate might not know, or be brought into personal contact with. The analogy that I put in the course of the case is a strong one; I mean that of the liability of the sheriff for the under-sheriff, when he is not merely responsible for the acts which he himself has done, but also for the acts of those whom the under-sheriff employs; and not only responsible for the acts done by virtue of the mandate, but also for the acts done under color of the mandate, matters which have been carried very far indeed in relation to the sheriff." I think these principles must govern this case.

I do not think that bribery prevailed extensively; most likely large portions of the money proved to have been paid to certain individuals did not go beyond the payees.

I shall report that the respondent was not duly elected and that his election is void, and that he must pay the costs of the petition; that no corrupt practices took place with his assent or knowledge; and that corrupt acts were committed by William Longhurst, David Lowry and Robert Best. I am inclined to look leniently on the

loans made by Best. He very frankly told his story, and honestly put the worst construction on what he did, although many others would probably have insisted it was all right. After much consideration, I have decided not to report Walter Thompson or Murray Fields, but I think the disposition of the money they received was most reprehensible.

It was urged upon me by Mr. Robinson that I should make some special order as to the costs of certain witnesses said to have been subpoenaed to be in court, but who were not called by the petitioners. I do not see that I have any material before me to warrant my making any order now beyond directing, as I do direct, that no costs be allowed petitioners for any witnesses summoned or in attendance, respecting any charge of undue influence, threatening with loss of office, salary or income, or the opening or supporting houses of entertainment for the accommodation or treating of electors, as I consider that the case disclosed no such practice, and that such charges were unwarranted. In my view of the law, I think it is in the province of the taxing master, after hearing both parties, to decide what witnesses to allow or disallow. Such is his duty, I think, in ordinary cases. It does not follow because a party is successful and entitled to the general costs of the cause, that he is entitled to the costs of all the witnesses he may subpoena; nor is the fact of their being called, or not called, the test of their being reasonably taxable.

I cannot conclude without expressing my strong sense of the admirable manner in which the case has been conducted on both sides, and the total absence of all irrelevant statements, and of any undue waste of the public time.

(9 *Commons Journal*, 1875, p. 78.)

SOUTH HURON.

BEFORE MR. JUSTICE GALT.

GODERICH, 20th and 21st October, 1874.

DAVID HOOD RITCHIE, *Petitioner*, v. MALCOLM COLIN CAMERON, *Respondent*.*Excessive expenditure—Subscriptions to churches—Appeal from Election Judge—Conflicting evidence—Costs.*

The respondent was charged with using means of corruption at his election (1) by giving up a promissory note and also \$20 to one M., on condition of M. and his sons voting for him; the charge depended upon the contradictory oaths of M. and the respondent; (2) by giving a large subscription to an election fund, some of which was expended for illegal purposes; and (3) by subscriptions to churches. The respondent denied any corrupt motive in these subscriptions. The Election Judge, on the evidence, found that the respondent was not personally guilty of corrupt practices, but he avoided the election on the ground of bribery by agents.

From the judgment on the personal charges the petitioner appealed; but the Court, on a review of the evidence, declined to set aside the finding of the Election Judge. The appeal was dismissed without costs, as there were strong grounds for presenting it.

Per Hagarty, C. J.—Candidates and agents should select less suspicious seasons than election times for exercising their liberality towards charitable and religious objects. (24 C. P. 488).

The petition contained the usual charges of corrupt practices.

Mr. R. A. Harrison, Q.C., for petitioner.

Mr. Bethune for respondent.

Evidence was given of bribery by agents, and of subscriptions to an election fund and to churches by the respondent. The principal facts of the case are set out in the report of the case in the appeal to the Court of Common Pleas, 24 C. P. 488.

At the close of the evidence, judgment was given as follows:

GALT, J.—I declare the election void on the ground of bribery by agents. I find that the respondent was not himself guilty of corrupt practices. I order the respondent to pay the costs of the petitioners.

The petitioner appealed to the Court of Common Pleas against the finding on the personal charges, on the ground that the respondent had used means of corruption, and had been guilty of corrupt practices by giving money, and making promises of same, and by subscribing money to churches and colleges with intent to corrupt or bribe electors to vote for him, or to procure his election.

The COURT, while intimating that had the finding of the learned Judge been otherwise it would not have interfered, declined to set aside the judgment of the Election Judge, and dismissed the appeal without costs, as the petitioner had strong grounds for presenting the appeal.

(9 *Commons Journal*, 1875, p. 30.)

EAST NORTHUMBERLAND.

BEFORE CHIEF JUSTICE HAGARTY.

COBOURG, 27th October, 1874.

ROBERT GIBSON, *Petitioner*, v. JAMES LYONS BIGGAR,
Respondent.

Committees—Agency—Bribery—Particulars—Costs.

The respondent nominated no committees to promote his election ; but he was aware that committees were acting for him in each municipality. On one occasion he went to the door of one of the committee rooms, and left some printed bills to be distributed. One P., who attended the meetings of this committee, and who said he was considered on the committee, committed an act of bribery.

Held, that the committee were agents of the respondent, that P. was a member of the committee ; and an act of bribery having been committed by him, the election was avoided.

The particulars not having been properly prepared, the petitioner, while obtaining the costs of the proceedings, was disallowed the costs of the particulars.

The petition contained the usual charges of corrupt practices.

Mr. John D. Armour, Q.C., for petitioner.

Mr. Hodgins, Q.C., and *Mr. C. R. W. Biggar*, for respondent.

The case turned upon the question whether self-organized committees for promoting the election of the respondent were his agents or were volunteers. *Staley-bridge case* (1 O'M. & H. 67); *Westminster case* (*ibid.* 91). The evidence on the point was as follows:

Respondent: I nominated no committees, but I understood committees were nominated. I suppose there was a committee in each municipality. I once went to the door of the committee-room for Brighton village, and left some printed bills to be circulated. Phayre, of Brighton, was a supporter of mine. I cannot say I saw anyone there but John Proctor, Kemp, and, I think, Ketchum. I never attended any committee. At former elections the committees were appointed by the Reform Association. It acted on its own motion. I had no control over it. The convention that nominated the candidate took upon itself to name committees. I assume they did so. I had nothing to do with them. I paid no expenses of any committees.

Ira B. Phayre: I was one of the persons who met at the Brighton committee-room. I did not see the respondent when he came to the committee-room. I don't know who were appointed on the committee; I believe I was considered on the committee. I was at the room nearly every evening. We had voters' lists, and it was placarded as a committee-room working for respondent.

HAGARTY, C. J.—I must assume from the respondent's own statement that he was aware of an organization in each municipality, acting in the character of a committee for him. As to the Brighton committee, the evidence is strong. The room was placarded as a committee-room. The respondent went there on one occasion. Mr. Phayre had visited it constantly; it was known to everyone as the respondent's committee-room, and the respondent was aware of some organization working for him in Brighton. I think agency in Phayre is proved; and an act of bribery having been committed by him, the election is void.

The respondent must pay the petitioner's costs; but owing to the cloudy manner in which the particulars have been prepared, I disallow so much of the petitioner's costs as have been incurred in obtaining, amending, briefing and placing the particulars on the record.

(9 *Commons Journal*, 1875, p. 11.)

CENTRE WELLINGTON.

BEFORE CHIEF JUSTICE HAGARTY.

GUELPH, 3rd and 4th November, 1874.

JOHN IRONSIDE *et al.*, *Petitioners*, v. GEORGE TURNER
ORTON, *Respondent*.

Bribery by Agents—Charge against respondent—Conflicting evidence.

The respondent was charged with corrupt practices, in that, when canvassing one C., a voter who said he would not vote unless he was paid, he said he was not in a position to pay him anything, but that if C. would support him, one of his (the respondent's) friends would come and see about it. The respondent, as he was leaving the voter's house, met one K., a supporter, who, after some conversation, went into C.'s house and gave him \$5 to vote for the respondent. The charge depended upon the evidence of the voter C. and his wife. The respondent denied making such a promise; and he was sustained by K. as to a conversation outside C.'s house, in which the respondent cautioned K. not to give or promise C. any money. The Election Judge on the evidence found that the respondent was not personally implicated in the bribery of the voter C. by K.

Before an Election Judge finds a respondent or any other person guilty of a corrupt practice involving a personal disability, he ought to be free from reasonable doubt. ||

The petition contained the usual charges of corrupt practices, and claimed the seat for Robert McKim, the defeated candidate, on a scrutiny of votes.

Mr. Bethune and Mr. Guthrie for petitioners.

Mr. Drew for respondent.

Evidence was given of acts of bribery committed by the parties named in the judgment; and at the close of the evidence on the first day, counsel for the respondent admitted that sufficient evidence had been given to avoid the election. Evidence was then given on the personal

charges against the respondent as set out in the judgment. At the commencement of the trial the claim for the seat was abandoned by consent of both parties.

HAGARTY, C. J.—I find that several acts of bribery were committed beyond question, and it was properly conceded by the respondent's counsel that the election must be set aside.

It remains to be seen whether the evidence brings home to the respondent a personal knowledge or assent to any corrupt practices. The only portion of evidence in this head requiring to be considered is that given by Campbell and his wife.

According to the petitioner's view the respondent canvassed Campbell, and finding the man's vote was professedly for sale, he said to him that he (the respondent) was not in a position to pay him anything, but that if Campbell would promise to support him, he would see that one of his friends would come and see about it. His wife, who was in bed, says that she didn't hear all the conversation, but heard the man ask for the vote, and say that if Campbell supported him, some of his friends would call and see him.

If I can be satisfied that this took place, I must hold that this was an offer to bribe, and such as I think would prove the respondent guilty of a corrupt practice. Campbell says that he saw the two sleighs on the road, and that after the respondent had returned, Kelly came up to his house, came in and gave him \$5, telling him to be up early at the poll to vote, and to come with Dunlop. He then watched from the window, saw Kelly go down to the road and the two sleighs drive off together, the respondent's sleigh going first or in front.

Now, in such a statement of facts, the case against the respondent would seem complete. A corrupt offer, a friend to come and do what the respondent could not do personally, the latter going down to the road, the friend coming up and giving the bribe, the respondent watching

till the friend returns, and the whole party—principal and agent—going away together.

Against this the respondent swears very positively that he never made such an offer or promise; that Campbell told him in effect that his vote was for sale; that he told him that he ought to be ashamed to say so, and again pressed him to vote or promise to vote for him, which Campbell declined to do; that finally respondent told him to think over it, that some of his friends would be coming that morning to the poll and could bring him with them, and that the respondent would be much obliged to him if he voted for him. I think that it is very clearly proved in the oaths of the respondent, Kelly and Snider, that the parties in the sleighs did not go away together, but that the respondent and Snider drove off before Kelly went up to Campbell's house, and that when Kelly came away the former were not on the road. I can hardly consider the discrepancy unimportant, as it negatives one serious aspect of the case, the waiting for Kelly's return and the departure together.

As to what took place on the road, the respondent came down from the house, saying that Campbell wanted money and he couldn't give it. He intimates he thought that perhaps Kelly, who was an impulsive man, might go up to Campbell, and therefore he warned him not to give him any money or promise anything to Campbell, and having said this, he did not think that Kelly would have gone to the house, and he drove off, not thinking that he would do so, and not knowing that Kelly had gone there. Kelly swears that he did not go there in consequence of anything said by the respondent; and they both say that it was only yesterday that the respondent first knew that Kelly had given money to Campbell. What took place on the road might have occurred without any corrupt practice or idea on the respondent's part. He tells his friends that Campbell's vote is offered for sale, but that he refused to promise or give anything, and told his friends to follow his example. If one of them, hearing

this, chose to go and purchase without the respondent's knowledge or assent, the latter could not be held personally liable. I do not see my way to holding that the transaction took place with his knowledge or assent when the only two persons who knew how it really was swear positively that it was not so. Everything must therefore turn on what took place in the house. If the respondent said what is imputed to him he certainly acted with the most startling folly, laying himself wholly in the power and at the mercy of a man of whom he previously had known nothing, and who on his first acquaintance showed himself to be utterly venal and ready to be sold to the highest bidder. Nothing has come out in evidence to induce me to think that in his general conduct of his canvass he acted with imprudence or with any indifference to the violation of the law. The little that appears as to his general conduct raises the idea that he was generally announcing his intention to spend no money. I, of course, don't place much reliance in such general declaration, but when the case, as here, rests on one transaction, I cannot avoid considering the whole aspect of the canvass as shown in the evidence.

It is needless to say that the conduct of Campbell was not such as to impress one favorably. Even the man who might take money for his vote might possibly shrink from taking the course he did if his idea was to lay a trap for the respondent. In addition, the latter waiting for Kelly and the simultaneous departure would play an important part in any account of the transaction. It is urged that he is directly corroborated by his wife. The latter heard only part of the conversation of what the respondent said—and he swears he did say something—about some of his friends taking Campbell to the poll in the morning, and she might easily in good faith have accepted her husband's version of it as that which she had heard.

Had the matter rested solely on Campbell's oath as opposed by the respondent's, I would act as I have already

done in similar trials, and hold the charge not proven. I am told that with the wife's statement the weight of evidence preponderates against the respondent. I appreciate the force of this argument, and have given it all the consideration in my power.

I think, before I find the respondent or any other man guilty of a corrupt practice involving a personal disability, to say nothing of the effect of it on character, I ought to be free from reasonable doubt. I have the heavy task imposed on me to pronounce upon his guilt or innocence, and I am bound, both personally and judicially, not to condemn until my conviction is clear and unhesitating. I feel bound to say that I entertain the gravest doubts as to whether I can venture to place implicit truth in Campbell's statement. On the contrary, I think its accuracy is open to serious question. It is not necessary that I say it seems to me a mere fabrication, even if I think so. It is sufficient if I think it too doubtful to be relied upon to warrant the condemnation of another. If I err, as I have no doubt many persons who feel keenly in contests of this character may think I do, it is better that it should be on what is significantly called the safe side.

I had occasion in a recent election case, when the conclusion of personal culpability was powerfully pressed on me, to give many hours of painful consideration to the duty of a judge in such cases. I have come to the conclusion that I best discharge the duty cast upon me by declining, on such evidence as is now before me, to find the respondent personally liable.

I find that the respondent was not duly elected, and that his election was void. I order that the respondent do pay the petitioners' costs, save and except such costs as may be on taxation shown to have been properly incurred by the respondent in consequence of the allegations as to a scrutiny of votes or the polling of illegal votes, and the prayer for the seat as claimed by and stated in the petition—which allegations and claims were abandoned by petitioners at the opening of the trial, and which costs are

to be paid to the respondent as an offset against petitioners' costs. I also find that James M. Fraser, Edward Gainor, Andrew Forester, James Smith, Michael Kerby, Aaron Baker, James Kerby, Jeremiah Hallett, David B. Kelly and Bernard Campbell, have been found, in my judgment, to be guilty of corrupt practices, and I shall report them accordingly.

(9 *Commons Journal*, 1875, p. 14.)

NORTH VICTORIA.

BEFORE THE ELECTION COURT.*

TORONTO, 26th June and 10th July, 1874.

HECTOR CAMERON, *Petitioner*, v. JAMES MACLENNAN,
Respondent.

Dominion Elections Act, 1874, not retrospective—Candidate a petitioner—Preliminary objections on bribery, treating, undue influence and travelling expenses—Corrupt practices—Assessment roll—Qualification of voters—Scrutiny—Mistakes in voters' lists—Report of Judge to Speaker.

The Dominion Elections Act of 1874 does not affect the rights of parties in pending proceedings, which must be decided according to the law as it existed before the passing of that Act; sec. 20 of that Act referring to candidates at some future election.

A candidate may be a petitioner although his property qualification be defective, if it was not demanded of him at the time of his election. If he claims the seat, his want of qualification may be urged against his being seated, but he may still show that the respondent was not duly elected, if he so charge in his petition.

The definition of "corrupt practices" in sec. 3, and the effect of sec. 20 of Controverted Elections Act of 1873, as to the report of Election Judges to the Speaker, considered.

The first principle of Parliamentary law is that elections must be free; and therefore, without referring to statutory provisions, if treating was carried on to such an extent as to amount to bribery, and undue influence was of a character to affect the election, the election would be void. A single bribed vote brought home to a candidate would throw doubt on his whole majority, and would therefore annul his return.

On a preliminary objection to a petition claiming the seat on a scrutiny, the Court declined to strike out a clause in the petition which claimed that the votes of persons guilty of bribery, treating and undue influence, should be struck off the poll. The giver of a bribe, as well as the receiver, may be indicted for bribery.

* The Judges present were: Richards, C. J.; Spragge, C.; and Hagarty, C. J. C. P.

The Court declined, in the present state of the law, to exclude inquiry as to the payment of travelling expenses of persons going to and returning from the poll, inasmuch as such payment might amount to bribery.

By the Dominion Elections Act of 1873, the qualification of voters to the House of Commons was regulated by the Ontario Election Acts.

The assessment roll is conclusive as to the amount of the assessment; but the mere fact of the name of a person being on the roll is not conclusive as to his right to vote. The Returning Officer is bound to record the vote if the person takes the oath, but that is not conclusive.

A petitioner claiming the seat on a scrutiny may show, as to votes polled for his opponent: (1) That the voter was not 21 years of age; (2) that he was not a subject of Her Majesty by birth or naturalization; (3) that he was otherwise by law prevented from voting; and (4) that he was not actually and *bona fide* the owner, tenant, or occupant of the real property in respect of which he is assessed.

Mistakes in copying the voters' lists should not deprive legally qualified voters of their votes any more than the names of unqualified voters being on the list would give them a right to vote. But the mere fact that the lists were not correct alphabetical lists, or had not the correct number of the lot, or were not properly certified, or the omitting to do some act as to which the statute is directory, is no ground for setting aside an election, unless some injustice resulted from the omission, or unless the result of the election was affected by the mistake.

This petition was presented by the defeated candidate against the respondent, and contained the usual charges of corrupt practices, and claimed the seat on a scrutiny of votes. The vote at the election was: for respondent, 564, and for petitioner, 566.

The respondent filed preliminary objections to the status of the petitioner, alleging that he had not the proper qualification required by law to entitle him to be elected a member of the House of Commons, and also to the following paragraphs of the petition:

"3. That the said respondent was, by himself and other persons on his behalf, guilty of bribery, treating and undue influence before, during and after the said election, whereby he was and is incapacitated from serving in Parliament for the said electoral district, and the said election and return of the said James Maclellan were and are wholly null and void.

"4. That many persons voted at the said election, and were reckoned upon the poll for the said James Maclellan, who were guilty of bribery, treating or undue influence,

and who were bribed, treated or unduly influenced to vote thereat for the said James Maclellan, and that the votes of all such persons were null and void, and ought now to be struck off the poll.

“ 5. That many persons were admitted to vote and did vote at the said election for the said James Maclellan, who were not entitled to vote thereat or to have their names retained or inserted on the voters’ lists for the said electoral division, by reason of their not being qualified in respect of property, occupation or value, or whose qualification was for other causes insufficient, or who were respectively subject to legal incapacity or were prohibited by law from voting, or were not subjects of Her Majesty by birth or naturalization, and such votes ought now to be struck off the poll.

“ 8. That many persons who had hired their horses, sleighs and carriages to the said James Maclellan and to his agents, for the purpose of carrying electors to and from the polling places at the said election, voted for the said James Maclellan at the said election, and were reckoned on the poll for him ; and that the travelling and other expenses of many persons in going to and returning from the said election, and who voted for the said James Maclellan, were paid by the said James Maclellan or by his agents, and that the votes of all such persons were and are void, and should be struck off the said poll.

“ 10. That the voters’ lists used by the several deputy returning officers at the said election were not correct alphabetical lists of all persons entitled to vote at the said election, within the several municipalities, or subdivisions, or wards thereof, together with the number of the lot, or part of a lot, or other description of the real property in respect of which each of them was so qualified ; nor were such voters’ lists duly certified according to the statute in that behalf, but the names of divers persons not properly entitled to vote at the said election, and who voted for the said James Maclellan, were improperly inserted in such voters’ lists, and ought to be

struck off the poll, and the names of divers persons who were properly entitled to vote thereat, and who tendered their votes for your petitioner, were omitted from the said voters' list, and ought to be added to the poll.

"12. That the polling subdivisions or wards in the said electoral district were not the same as those used at the last preceding election of members of the Legislative Assembly, and that the polling places for each of the subdivisions, or wards, were not provided in the most central and convenient place for the electors of such subdivisions, or wards, nor was public and sufficient notice given, by proclamation or otherwise, of the said polling subdivisions, and of the places appointed for holding the said poll, and that the polling subdivisions at the said election were not established according to law."

The preliminary objection to the third paragraph was that even if the respondent was, by himself or other persons on his behalf, guilty of treating and undue influence, as alleged, such acts would not incapacitate him from serving in Parliament for the said electoral district, nor render the said election and return of the respondent null and void.

And as to the fourth, fifth, and latter part of the eighth paragraphs of the said petition, that even if the facts were as stated, such facts are not sufficient to render the said votes null and void, or to entitle the petitioner to have the same struck off the poll, or in any event would not prevent such persons voting at the said election, or entitle the petitioner to have the said votes declared null and void.

And as to the tenth and twelfth paragraphs of the said petition, on the ground that even if the facts were as stated, such facts are not sufficient to render the election or return of the respondent null and void, or to entitle the petitioner to be declared duly elected and returned.

A summons having been taken out by the petitioner to set aside the preliminary objections, cause was shown by

Mr. Mowat, Q.C. (Attorney-General of Ontario), and *Mr. Bethune*, for respondent.

Mr. F. Osler, for petitioner, supported the summons.

RICHARDS, C. J.—Section 41 of the British North America Act, 1867, enacts that, until the Parliament of Canada otherwise provides, all laws in force in the several Provinces of the Union, relative (amongst other matters) to the following: The qualifications and disqualifications of persons to be elected or to sit or vote as members of the House of Assembly, or Legislative Assembly, in the several Provinces, the voters at elections of such members, the oaths to be taken by voters, the returning officers and their duties, the proceedings at elections, etc., shall respectively apply to elections of members to serve in the House of Commons for the same several provinces. Then, by a proviso, special provision is made that in Algoma, in addition to persons qualified by the law of the Province of Canada to vote, every male British subject, aged 21 years or upwards, being a householder, shall have a vote.

Under the Imperial Statute 3 & 4 Vic., cap. 35, sec 28, it was provided that “No person shall be capable of being elected a member of the Legislative Assembly of the Province of Canada who shall not be legally or equitably seized as of freehold for his own use and benefit of lands or tenements held in free and common soccage, or seized or possessed for his own use and benefit of lands or tenements held in fief or in roture, within the said Province of Canada, of the value of five hundred pounds of sterling money of Great Britain, over and above all rents, charges, mortgages, and incumbrances charged upon and due and payable out of or affecting the same; and every *candidate*, at such election, before he shall be capable of being elected, shall, if required by any other candidate, or by any elector, or by the returning officer, make the following declaration:

“I, A. B., do declare and testify that I am duly seized

at law or in equity as of freehold, for my own use and benefit, of lands or tenements held in free and common soccage (or duly seized or possessed for my own use and benefit of lands or tenements held in fief or in roture as the case may be), in the Province of Canada, of the value of five hundred pounds of sterling money of Great Britain, over and above all rents, mortgages, charges and incumbrances charged upon or due and payable out of or affecting the same, and that I have not collusively or colorably obtained a title to or become possessed of the said lands and tenements, or any part thereof, for the purpose of qualifying or enabling me to be returned a member of the Legislative Assembly of the Province of Canada."

Sec. 36, Con. Stat. of Canada, cap. 6, recites that under the 28th section of the Union Act every candidate shall, if required, make the declaration, and then proceeds to enact that every such candidate, when *personally* required as aforesaid to make the declaration, shall, before he shall be elected, give and insert at the foot of the declaration required of him a correct description of the lands or tenements on which he claims to be qualified according to law to be elected, and their local situation, by adding immediately after the word "Canada," which is the last word in the said declaration, the words, "And I further declare the lands or tenements aforesaid consist of," &c.

Under both the Union Act and the Consolidated Statute, wilfully false statements in relation to the qualification make the party guilty of a misdemeanor, and liable to the pains and punishment incurred by persons guilty of wilful and corrupt perjury.

Sec. 37 of Con. Stat. cap. 6, enables a candidate to make the declaration voluntarily before as well as after the date of the writ of election.

Sub-sec. 2. "No such declaration, when any candidate is required to make the same by any other candidate, or by any elector, or by the returning officer, above provided, need be so made by such candidate unless the same has been personally required of him on or before the day of

nomination of candidates at such election, *and before a poll has been granted*, and unless he has not already made the same voluntarily as he is hereinabove allowed to do, *and not in any other case*; and when any such declaration has been so required according to law, the candidate called upon to make the same may do so at any time during such election; provided it be made before the proclamation to be made by the returning officer at the close of the election of the person or persons elected at such election."

Sub-sec. 3 allows the declaration to be made before the returning officer, or a J.P., who shall attest the same by writing at the foot the words "taken and acknowledged before me," etc., or words to the like effect, and by dating and signing the attestation.

Sub-sec. 4. When a candidate delivers or causes to be delivered such declaration, so made and attested, to the returning officer at any time before the proclamation made by him at the close of the election, he shall be deemed to have complied with the law to all intents and purposes.

The intention of the Imperial Legislature seems to have been to make the same qualification as to property necessary to qualify a candidate for the House of Commons, here in Ontario (Upper Canada), as was necessary to qualify him to be elected a member of the House of Assembly of the then Province of Canada. Of course the latter part of the declaration, where it alleged that the qualification was not colorably obtained to qualify him to be returned a member of the "Legislative Assembly of the Province of Canada," could not apply in the same words; the intention being that he should declare that he had not obtained the qualification colorably to qualify him to be elected "a member of the House of Commons of the Dominion of Canada." The intention seems plain and undoubted. There is also another difficulty in literally complying with the terms of the Con. Stat., cap. 6, as to the declaration being delivered to the returning officer

at any time *before the proclamation* made by him at the closing of the election, no such proclamation being required under the election law as it then stood. By 29 & 30 Vic., cap. 13, sec. 10, no day was to be fixed for closing the election, nor any proclamation of the candidate elected. Nevertheless, if the candidate made the declaration and delivered it to the returning officer before the polling was closed, and probably before the returning officer had made his return to the Clerk of the Crown in Chancery, of the total number of votes taken for each candidate, it would have been in time. Though the terms of the Consolidated Act could not be literally complied with, it could in substance. We are not, therefore, prepared to say that by the alteration in the law referred to there has been such a change effected that no property qualification was required by a candidate to be elected for the House of Commons at the time the election was held.

If the candidate who now seeks the seat was not qualified under the statute to be elected, I take it for granted that the respondent will show that under the 54th section of the Controverted Elections Act of 1873. It does not follow from this, however, that he may not be a good petitioner. Before the Grenville Act, 10 Geo. III., cap. 16, there was a difficulty as to the person who could be a petitioner, and his qualification as an elector was often attacked; but that statute provided that any person claiming to vote, or who claimed to be returned, might present a petition complaining of an undue election. Under the Imperial Statute, 31 & 32 Vic., cap. 125 (from which our Acts are copied), it is provided by sec. 5 that a petition complaining of an undue return, or undue election of a member to serve in Parliament, may be presented to the Court by any one or more of the following persons :

1. Some person who voted, or who had a right to vote at the election to which the petition relates ; or
2. Some person claiming to have a right to be returned or elected at such election ; or

3. Some person alleging himself to have been a candidate at such election.

Under the Dominion Act of 1873, cap. 28, sec. 10, a petition complaining of an undue return, or undue election of a member, or of no return, or a double return, may be presented to the Election Court:

1. By *some person* who was *duly qualified* to vote at the election to which the petition relates; or

2 and 3. Are in the very words of the Imperial Act.

Now, here the petitioner was a candidate, and claims to have a right to be elected and returned at the said election.

We have been referred to the *Honiton case* (3 Lud. 163, 165 [1782],) where it was decided that M.'s election having been declared void by a committee, on the ground of bribery, and he stood on the vacancy, and being unsuccessful, petitioned against the return of his opponent, it was objected that as he could not legally be a candidate, he could not petition. The committee resolved that the said M. was not eligible to fill the vacancy occasioned by the said resolution. He was, therefore, not permitted to proceed. It is not very clear if a new election was prayed for, or that the return of the sitting member might be declared void. There were electors who were petitioners, and their petition was tried as to the charges of bribery, which were decided in favor of the sitting member.

In the *Taunton case*, 1831 (referred to in Wolferstan's Law of Elections at p. 8, and Perry and Knapp's Election Cases, 169, note), the objection that petitioner could not proceed, because the sitting member was prepared to prove bribery against him, was overruled.

In the *Penryn case* (P. & K. 169, n.), the petitioner had refused to take the qualification oath when called upon. The committee held that, not having complied with the necessary provisions to give him the character of a candidate, he had no title to petition: *Sandwich case* (*ibid.* 169); *Great Grimsby case* (*ibid.* 169); Roe on Elections, 2nd Ed. 123; Rogers on Elections, 10th Ed. 410.

But a person alleging himself to be a candidate is entitled *prima facie* to petition, unless his disqualification is obvious and incontestable: *Londonderry case* (W. & Br. 214).

It is no objection to the petition of electors being proceeded with, that their candidate is disqualified: *Colchester case* (3 Lud. 166), unless, *semble*, the petition *only* claims the seat for the candidate on the ground that he had the majority of legal votes.

In Wolferstan's book at p. 5, referring to the petitioner under the English Act, as to a person who voted, or had a right to vote at the election to which the petition relates, the author says, that this means those who rightfully voted, or whose qualification on the register, whether they voted or not, was unimpeachable *at the time of the election*: *Lisburn case* (W. & Br. 222), decided under secs. 11 & 12 Vic., cap. 98. The words of 31 & 32 Vic., cap. 125, are identical: *Cheltenham case* (W. & Br. 63).

Under the statutes previous to 11 & 12 Vic., cap. 98, any one claiming in his petition to have had a right to vote at the election might petition. But under that state of the law, committees allowed the sitting members to show that the petitioners had not the right they claimed: *North Cheshire case* (1 P. R. & D. 214); *Berwick case*, 30th June, 1820; *contra*, *Harwich case* (1 P. R. & D. 73); and *Aylesbury case* (*ibid.* 81); Rogers on Elections, 10th Ed. 408.

In the second edition of the Law of Elections, by Leigh & LeMarchant, at p. 108, it is stated, "Although the words of the Act say one or more, it is prudent, provided the petition be presented by electors, to include some larger number as petitioners, in case an objection should be taken that though they had voted, they had no right to vote at the election. Care should also be taken that all the petitioners should, as far as possible, be voters whose votes could not be impeached. If the petition is presented by a candidate, it means by any person elected to serve in Parliament at an election, and any person who has been

nominated as, or declared himself a candidate at an election."

These proceedings on election petitions are not now considered as matters in which the parties to them are alone interested. To use the language of Bovill, C. J., in *Waygood v. James, Taunton case* (L. R. 4 C. P. 365): "The inquiry is one not as between party and party, but one affecting the rights of the electors, the persons who are or may be members or candidates, and the House of Commons itself." And in the *Brecon case* (2 O'M. & H. 34), Mr. Justice Byles said: "The petitioner being a trustee for the whole body of the voters for the borough, and for the public generally, cannot withdraw unless he complies with the provision of the statute." Under the statute, the petition is not simply served on the sitting member, but a copy of the petition is sent to the returning officer, and he is required to publish the same, so that when a petition is presented it is known who the petitioner is, and if he is a candidate that is known throughout the electoral district. If he represents himself as a voter duly qualified to vote at the said election, on looking at the rolls and voters' lists, it there appears if he was duly qualified to vote as he claims. On turning to the statute, any person interested in the election sees it plainly stated that a candidate or voter, duly qualified to vote at the election, may petition. Under such circumstances, all persons interested in the matter would assume that the petition would go on. The special provisions in the Act to guard against a collusive withdrawal of the petition would all induce an interested elector to suppose, when a petition was presented by a candidate, or a voter duly qualified to vote at the election, that nothing could be urged against the inquiry being proceeded with.

It is objected against the petition that the petitioner did not possess the necessary qualification to be a candidate. He was a candidate in fact. His right to be such is only now questioned; and unless there is some case binding on us which expressly holds that if the preliminary

inquiry establishes the fact that the candidate was not qualified, therefore he has no *locus standi* to show that the sitting member is not duly elected, we think we ought not to stay the inquiry as to the respondent's right to hold the seat.

The decisions of committees to which we have referred are not uniform, or we might be bound by them under section 33 of the Dominion Act. There has been no case cited on this point which has been decided since the new Act came in force in England, that holds, if the petitioner is disqualified as a candidate, that the inquiry cannot be pursued. In the 2nd edition of Leigh & Le Marchant's Law of Elections, at page 76, referring to the practice, it is stated, "The general charges would usually be gone into first by the petitioner, and at the close of his case, the respondent's counsel proceeds not only to answer the charges against the respondent, but to open counter charges against the petitioner (that must be when he is a candidate). If the petitioner is disqualified, a scrutiny of votes may still take place for the purpose of showing that the respondent has not really a majority of legal votes, even though the respondent is declared not to have been guilty of corrupt practices;" and the following language of Baron Martin is quoted: "The question in the scrutiny would be which of these gentlemen had the majority of legal votes, and assuming the petitioner to have been personally incapacitated, that would not have affected the votes of the persons who gave their votes for him, they being ignorant of it. They would be perfectly good votes; and the persons who were the supporters of the petitioner would have a right to have it determined whether or not the respondent was sent to Parliament by a legal majority:" *York, West Riding, Southern Division* (1 O'M. & H. 215).

The language of Willes, J., as follows, is also cited: "Against any member, therefore, who is elected in the first instance, any one directly interested may petition. If the petitioner does not claim the seat, there is no re-

crimination allowed ; but if the petitioner does claim it, the respondent is entitled to protect himself, and, before the scrutiny, prove a recriminatory case, and show that the election of the other candidate could not stand. It is true that even if he proves it, *the petitioner may still go into the scrutiny to turn out the sitting member.*"

Waygood v. James, Taunton case (L. R. 4 C. P. 368).

In the *Norwich case* (19 L. T. N. S. 620) it was urged that as the sitting member had been unseated for bribery by his agents, he had no further interest, and had no *locus standi*. Martin, B., said : " Is not the sitting member a respondent in respect of every matter that you charge in your petition, and in respect of every claim you make in your petition, and has he not a right, as *having been a candidate*, though he may be unable to protect his own seat, to show that you are not entitled to it ? "

We think the weight of reason and authority is in favor of allowing a candidate to be a petitioner under the statute, though his property qualification may be defective, if it was not demanded of him at the time of his election. If he claims the seat, his want of qualification may be urged against his being seated ; but he may still show that the respondent was not duly elected if he so charges in his petition.

By section 20 of the Dominion Act of the last session of Parliament, respecting the election of members of the House of Commons, it is provided that from and after the passing of this Act, no qualification in real estate shall be required of any candidate for a seat in the House of Commons of Canada, any statute or law to the contrary notwithstanding ; but such candidate shall be either a natural born subject of the Queen, or a subject of the Queen naturalized by an Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of one of the Provinces of Upper Canada, Lower Canada, Canada, Nova Scotia, New Brunswick, Manitoba, British Columbia, or Prince Edward Island, or of this Parliament.

By section 134, it is enacted that the Act passed by the Parliament of Canada in the 36th year of Her Majesty's reign, intituled, "*An Act to make temporary provision for the election of members to serve in the House of Commons*," is hereby repealed, except only as to elections held, rights acquired, or liabilities incurred before the coming into force of this Act; and no enactment or provision contained in any Act of the Legislature of the late Province of Canada, or of any of the Provinces now composing the Dominion of Canada, respecting the election of members of the Elective House of the Legislature of any such Province, shall apply to any election of a member or members of the House of Commons held *after the passing of this Act*, except only such enactments and provisions as may be in force in such Province at the time of such last mentioned election, relating to the qualification of electors and the formation of voters' lists, which will apply for like purposes to elections of members of the House of Commons as provided by this Act. By section 135, it was provided that the Act should come into force on the first day of July next after the passing thereof.

Where proceedings have been taken before the passing of the Act referred to, to set aside the election of a member for want of the property qualification required by law, at the time the election took place, can the 20th section of the Act above quoted be successfully invoked to aid the unqualified candidate, and destroy the rights of the petitioners?

If proceedings in the Election Court are to be analogous to suits in other courts, then the rights of the parties ought to be decided according to the law as it stood before it was repealed. No doubt there may be cases where persons may be deprived of rights and remedies which they had when the actions were commenced, by the effect of some Act of Parliament. But then it ought to appear that such was the intention of the Legislature in passing the Act, or that such result

was the natural and proper one to flow from the Act itself. The intention seems to be, by the 134th section, that the Act in force at the time the elections took place should not be repealed as to elections held, rights acquired, or liabilities incurred before the coming into force of the new Act. It also refers to certain enactments which should not apply to any election of a member of the House of Commons *held after the passing of the Act*. The obvious intention of the Legislature seems to have been that which would be considered reasonable, viz., that as to the elections held before the passing of the Act, the law then in force should prevail, whilst as to elections after the passing of the Act, the new law should be acted on, and govern the rights of the parties.

Under the Dominion Statute, 31 Vic., cap. 1 (the Interpretation Act), in relation to the construction of Acts of the Parliament of Canada, it is provided by sec. 7, sub-sec. 35, that "When any Act is repealed, wholly or in part, and other provisions substituted, all officers, persons, bodies politic or corporate, acting under the old law, shall continue to act as if appointed to act under the new law until others are appointed in their stead; and all proceedings taken under the old law shall be taken up and continued under the new law, when not inconsistent therewith; and all penalties and forfeitures may be recovered, and *all proceedings had in relation to matters which have happened before the repeal, in the same manner as if the law were still in force, pursuing the new provisions so far as they can be adapted to the old law.*"

Sub-sec. 36. "The repeal of an Act at any time shall not affect any act done, or any right or right of action existing, accruing, accrued or established, or any proceedings commenced in a civil cause before the time when such repeal shall take effect, but the proceedings in such case shall be conformable, when necessary, to the repealing Act."

Sub-sec. 37. "No offence committed, and no penalty or forfeiture incurred, and no proceedings pending under

any Act at any time repealed, shall be affected by the repeal, except that the proceedings shall be conformable, when necessary, to the repealing Act ; and that when any penalty, forfeiture or punishment shall have been mitigated by any of the provisions of the repealing Act, such provisions shall be extended and applied to any judgment to be pronounced after such repeal."

The section as to the property qualification does not come into force by repeal of the Act of 1873, under which this election was held, but by its own affirmative power, declaring *that after the passing* of the Act no qualification should be required of a *candidate* for a seat in the House of Commons of Canada. The petitioner here became a candidate before the Act in question was passed, and the election which he is contesting was held, and the respondent was returned as a member, before the Act in question was introduced. The fair and reasonable interpretation of the meaning of the Legislature is, that the 20th section refers to candidates for a seat at some future election, not to candidates when the election had taken place, and when what is to be done in relation to them is to correct the errors and mistakes then made.

The proper view to take, we think, looking at the statute itself, the Interpretation Act, and the general rules applicable to the construction of statutes, is that the Legislature did not intend to affect the rights of parties in pending proceedings, but that they should be decided as the law existed before the passage of the Act referred to.

We have already stated what we think the law was on the subject of the property qualification necessary to be possessed by candidates to qualify them to be elected, when the election in question took place.

As to the objection to the charge of treating and undue influence alleged in the third paragraph of the petition in connection with bribery, if the treating were to such an extent as to amount to bribery, and the undue influence was of a character to affect the whole election without

referring to any statutory provisions, it would, by the law of Parliament, I apprehend, influence the result.

The first principle of Parliamentary law, as applicable to elections, is that they must be *free*, and if treating and undue influence were carried to an extent to render the election *not free*, then the election would be void. The following observations apply generally to votes that may be influenced by treating, etc. A vote influenced by treating was bad before the statute, and is bad now. Under the statute it would seem necessary to show not only that the entertainment was corruptly received by the voter, but that it was corruptly given by the candidate; but as proof of the former would invalidate the vote at common law, it is unnecessary to add proof of the latter.

The 23rd section of the Corrupt Practices Act of 1854 (Imp.), which declares the giving of entertainments to voters on the polling and nomination days to be illegal, says nothing as to the effect upon the votes given. For this, therefore, resort must be again had to the common law of Parliament; and the question will be, as heretofore, whether the vote was influenced by the result of the entertainment or not.

A vote unduly influenced is a bad vote by the common law of Parliament: Rogers on Elections, 10th Ed., p. 536.

It is very embarrassing to carry out the Dominion Controverted Election Act of 1873, owing to the fact that we have no Corrupt Practices Prevention Act applicable to Dominion elections, which contains all of the provisions of the Imperial Act of 17 & 18 Vic., cap. 102, and that the Dominion Act of 1873 omits the 43rd and 44th sections, which are contained in the Parliamentary Elections Act of 1868, Imp. Stat. 31 & 32 Vic., cap. 125, from which the Dominion Act was undoubtedly framed. These sections, with some in the Corrupt Practices Act, have a very important bearing on the questions which may come before the Election Judges.

Under the 43rd section (Imp.), when it is found by the report of the Judge upon an election petition under the Act

that bribery has been committed by, or with the knowledge and consent of, any candidate at an election, such candidate shall be deemed to have been personally guilty of bribery at such election, and his election, if he has been elected, shall be void, and he shall be incapable of being elected to, and of sitting in, the House of Commons during the seven years next after the date of his being found guilty, and he shall be further incapable, during the said seven years, of holding office, etc.

The 44th section (Imp.) makes his election void if he employs any person as his agent who has been found guilty of any corrupt practice, or reported guilty of any corrupt practice by a committee of the House of Commons, or the report of a Judge on an election petition under the Act, or a report of commissioners appointed under cap. 57, 15 & 16 Vic.

Under the 45th section (Imp.), any person other than a candidate found guilty of bribery in any proceeding in which, after notice of the charge, he has had an opportunity of being heard, shall, during the next seven years after the time he has so been found guilty, be incapable of being elected or sitting in Parliament.

By the 36th section of the Corrupt Practices Prevention Act of 1854, Imperial Statute, it is enacted: If any candidate, at any election for any county, city or borough, shall be declared by any Election Committee guilty, by himself or agents, of bribery, treating or undue influence at such election, such candidate shall be incapable of being elected or sitting in Parliament for such county, city, or borough, during the Parliament then in existence.

The law being in this state in England, the Parliamentary Elections Act, section 3, declares that corrupt practices shall mean bribery, treating and undue influence, or any of such offences as defined by Act of Parliament, or recognized by the common law of Parliament. By the same section of the Dominion Controverted Elections Act of 1873, it is declared that "corrupt practices shall mean bribery and undue influence, treating, per-

sonation and other illegal and prohibited acts, in reference to elections, or any of such offences, as defined by Act of the Parliament of Canada."

Under section 20 of the Dominion Act of 1873, cap. 28, when any charge is made in an election petition of any corrupt practice having been committed at the election to which the petition refers, the Judge shall, in addition to the certificate (required by the 19th sec.), and at the same time report in writing to the Speaker as follows:

(a) Whether any corrupt practice has or has not been proved to have been committed by, or with the knowledge and consent of, any candidate at such elections, stating the name of such candidate and the nature of such corrupt practice.

(b) The names of any persons who have been proved at the trial to have been guilty of any corrupt practice.

(c) Whether corrupt practices have, or whether there is reason to believe that corrupt practices have extensively prevailed at the election to which the petition relates.

These provisions are similar to those contained in the Imperial Act.

Taking the whole of that Act, it is very apparent that the report as to corrupt practices is consistent with it, and by it certain results are to follow the report. The want of these omitted clauses, and of the 36th section of the Corrupt Practices Act, renders it difficult to say how far the report, as to sections (b) and (c), required of the Judge, will be of use when returned to the House of Commons. The Legislature still requires the report to be made, and we do not see how we can strike out the clause of the petition complaining of the practices referred to.

The 18th sec. of Dominion Elections Act, 36 Vic., cap. 27, forbids any candidate, directly or indirectly, to employ any means of corruption by giving any sum of money, office, place, or employment, gratuity or reward, or any bond, bill or note, or conveyance of land, or any promise of the same, nor shall he, either by himself or his authorized agent for that purpose, threaten any elector with losing

any office, salary, income or advantage, with intent to corrupt or bribe any elector to vote for such candidate, or to keep back any elector from voting for any other candidate ; nor shall he open and support, or cause to be opened and supported at his costs and charges, any house of public entertainment for the accommodation of the electors ; and if any representative returned to the House of Commons is proved guilty, before the proper tribunal, of using any of the above means to procure his election, his election shall be thereby declared void, and he shall be incapable of being a candidate, or being elected or returned during that Parliament.

The Corrupt Practices Act of 1860, passed by the Province of Canada, defines bribery in the same way as the English Act of 1854, and in the same way declares the offence a misdemeanor, for which the parties may be punished, both the giver and receiver of the bribe. Under the 6th section of the English Act, it is provided that if a person claims to be placed on the list of voters who has been convicted of bribery or undue influence at an election, or a judgment recovered against him for any penal sum recoverable in respect of any of the offences of bribery, treating or undue influence, then the Revising Barrister shall erase the name of such person from the list of voters ; or if he claims to have his name inserted on the list, he shall disallow such claim ; and the names of such persons so expunged from the list of voters, or refused to be placed thereon, shall be inserted in a list of persons disqualified for bribery, treating or undue influence, which shall be appended to and published with the list of voters.

The 36th section, already referred to, applies to the candidate, and declares him incapable of being elected or sitting in Parliament, when he shall be declared guilty by an Election Committee.

The 3rd section of the Provincial Statute of 1860 makes the hiring of vehicles to convey electors to the polls, or paying the expenses of electors in coming to the polls,

illegal acts, and makes the person offending liable to a penalty of \$30 for each offence, and costs of suit; and any elector who shall hire his horse to any candidate, or the agent of such candidate, for the purpose of conveying electors to or from the polls, shall, *ipso facto*, be disqualified from voting at such election, and shall also forfeit \$30 to any person who shall sue for the same.

This section, and the 18th section of the Dominion Act, cap. 27, of 1873, seem to be the only ones which declare the effect on the voter and the candidate of the illegal and prohibited acts.

In the Act of 1860, the bribery is declared to be a misdemeanor, and the mode of recovering the penalty pointed out, but its effect on the status of the member and the voter is not declared.

Whilst the Controverted Elections Act of 1873 defines what corrupt practices shall mean, and makes it necessary for the Judge, under certain circumstances, to report whether such practices have been proved to have been committed, and by whom committed, yet the statute does not declare the effect of such report. We are then left in these unprovided cases to the common law of Parliament.

The bribing of an elector was always punishable at common law, independent of the statute: Rogers on Elections, 10th Ed. 308, and Lord Mansfield's opinion expressed in *Rex v. Pitt* (3 Burr. 1335.)

In *Rex v. Vaughan* (4 Burr. 2501), Lord Mansfield said, "Wherever it is a crime to *take* it is a crime to give; they are reciprocal. And in many cases, especially in bribery at elections to Parliament, the *attempt* is a crime; it is complete on his side who *offers* it."

It therefore appears to be a crime in the giver as well as the receiver of the bribe, and both may be indicted.

In Bushby's Election Law, 4th Ed. 111, it is stated: "Now one consequence in Parliament of common law bribery, when committed by a duly qualified and successful candidate at an election, was to enable the House, and it exclusively, to annul his return, and that though only

a single bribe was proved. All the votes so procured were void, and even after deducting them, had he still a majority in his favor, the result was the same." See May's Parl. Prac. 7th Ed. 56; Simeon, 166; 2 Doug. 404, n.

This was intended not so much as a penalty, as to secure to constituents a free and incorrupt choice, seeing that a single purchased vote, brought home to the candidate, might well throw doubt on his whole majority.

It is said an elector who has administered bribes is not disqualified at common law from voting afterwards at that or any other election: Bushby 114, and cases there cited.

The unauthorized bribes of third persons, who are not agents of the candidate, do not affect his return, though given in his interest, unless the majority depends on votes so obtained, or unless such bribes occasion general corruption: Bushby, 121.

It seems a strange state of the law that the person who bribes may be indicted for a crime and punished in that way, yet his vote may stand good, whilst the person bribed loses his vote and the candidate may lose his seat. It may be that this will be the result, because of the omissions in our statute law; but when the evidence in such a case is brought before me, and I am compelled to decide, I would give the question more consideration than I have been able as yet to bestow on it, before holding that the vote of the person giving the bribe would be held good.

In being called on as we now are, without any evidence before us, to decide certain questions which may affect the qualification of voters or the standing of candidates, and which in truth can only apply to a limited number of cases (the law, both in the Dominion and Province of Ontario, differing now from the Imperial statute), the language of Willes, J., in *Stevens v. Tillet* (L. R. 6 C. P. 147), seems to me peculiarly applicable. He says: "The order in this case to strike out the clauses in the petition which were objected to must therefore be sustained, if it be sustained, upon showing that leaving those clauses

in the petition could not have any effectual end in the disposal of the prayer thereof, whatever might be the character of the evidence which was produced before the Judge at the trial. The true question, as it appears to me, upon this occasion, is whether in any reasonably conceivable state of the evidence a case might be made out, upon the trial of this petition before the Judge in the regular and ordinary way, which would make it the duty of the Judge to grant the prayer of the petition."

We do not feel warranted, in this stage of the proceedings, in striking out that portion of the fourth paragraph of the petition which relates to the votes of persons who were guilty of bribery, treating, or undue influence.

Under the Dominion Statute, 36 Vic., cap. 27, sec. 2, the laws in force in the several Provinces of Canada, Nova Scotia and New Brunswick, on 1st July, 1867, relative to the qualifications, etc., of members, the voters at elections of such members, the oaths to be taken by voters and generally the proceedings at and incident to such elections, shall, as provided by the British North America Act of 1867, continue to apply respectively to elections of members to serve in the House of Commons for the Provinces of Ontario, Quebec, Nova Scotia and New Brunswick, subject to exceptions and provisions thereafter made.

By sec. 4, subject to the provisions thereafter made, the qualification of *voters* at elections in the Province of Ontario, for members of the House of Commons, *shall be that established* by the laws in force in that Province on 23rd January, 1869, *as the qualification of voters* at elections of *members of the Legislative Assembly*; and the voters' lists to be used at the election of members of the House of Commons shall be the same as if such elections were of members of the Legislative Assembly, on the basis of the qualification aforesaid; and the polling subdivisions or wards shall be the same as if such elections were for members of the Legislative Assembly; and the returning officer shall provide a polling-place for each subdivision

or ward in the most central or convenient place for such elections.

By sec. 5, the oath or affirmation to be required of voters in the said Province shall be that prescribed by the 54th section of cap. 6 of the Consolidated Statutes of Canada, and no other, except in Algoma and Muskoka, as thereafter provided.

Under sec. 41 of the British North America Act, all laws in force in the several Provinces at the time of the union relative to the voters at elections of members of the Legislative Assembly, the oaths to be taken by voters, the proceedings at elections, etc., respectively, apply to elections of members to serve in the House of Commons. The qualification of voters in Ontario referred to by sec. 4, above cited, is regulated by Provincial Statute, 32 Vic., cap. 21. By sec. 5 of that Act, the following persons, and no other persons, being of the full age of twenty-one years, and subjects of Her Majesty by birth or naturalization, and not being disqualified under the preceding sections (2, 3, 4), or otherwise by law prevented from voting, if duly registered or entered on the last revised and certified list of voters according to the provisions of that Act, shall be entitled to vote at the elections of members to serve in the Legislative Assembly, viz.:

(1.) Every male person *being actually and bona fide the owner, tenant, or occupant of real property of the value hereinafter next mentioned, and being entered on the then last revised assessment roll for any city, town, village, or township, as the owner, tenant, or occupant of such real property of the actual value in cities of \$400, in towns of \$300, in incorporated villages of \$200, and in townships of \$200, shall be entitled to vote at elections of members of the Legislative Assembly.*

As to the fifth paragraph, we think the petitioner may show :

1. That the voter was not twenty-one years of age.
2. That he was not a subject of Her Majesty by birth or naturalization.

3. That he was otherwise by law prevented from voting.

4. That he was not actually and *bona fide* the owner, tenant, or occupant of the real property in respect of which he is assessed.

We think the roll conclusive as to the amount of the assessment. The fact that the name of a person is on the assessment roll or list of voters is not conclusive as to his right to vote. If his name is on the list and he takes the oath required by the statute, the returning officer may be bound to record his vote, but that does not seem conclusive under the words of the Ontario Act. It is not being registered that gives the qualification; but though he has the qualification in other respects, he cannot vote unless his name is entered on the proper list. At one time, in England, though the name was on the register and the returning officer was bound to admit the vote, yet it might be attacked on a scrutiny, and even now for some causes may still be attacked.

Under the view we take of the qualification being regulated by the Ontario Act, we do not think we can properly pass over or disallow the part of the 5th paragraph of the petition objected to.

Then, as to the objection to the latter part of the 8th paragraph, paying the travelling expenses of persons coming and returning from the election. By the Corrupt Practices Act of Canada of 1860, sec. 3, paying the expenses of voters is an illegal act, and any elector who shall hire his horse to any candidate or agent for the purpose of conveying electors to and from the polling places, shall be disqualified from voting at such election. Section 71 of the Ontario Act, 32 Vic., cap. 21, is similar in effect, and a penalty of \$100 is imposed, but the latter part provides that any elector who shall hire a horse, etc., *for* any candidate or *for* any agent of any candidate for the purpose of conveying any electors to and from the polling place, shall be disqualified from voting at such election, and under a penalty of \$100. *Cooper v. Slade* (6 H. L. 746), seems to be to the effect that merely paying the

expenses of an elector, as the law stood in England, was not a violation of the statute, but promising to pay might be held to be bribery. In the present state of the law we do not think we can properly exclude inquiring into these matters.*

As to the objection to the 10th paragraph. If the names of persons, whose votes would not be legal in the view already expressed in the objection to the 5th paragraph of the petition, were inserted on the lists handed to the deputy returning officer, their votes for respondent would be bad, though the names were on the lists handed to the deputy returning officer, for the reasons already given. And if persons who were in other respects properly entitled to vote, and whose names were on the last revised and certified list of voters according to the provision of the statute, tendered their votes for petitioner, it may be contended with great force that they are entitled to have their votes now recorded for the petitioner. The mistake in copying their names on the list for the particular subdivision, or ward, should not deprive a legally qualified voter of his vote, though it might justify the deputy returning officer in refusing to receive it. But the mere fact that the lists were not correct alphabetical lists, or had not the correct number of the lot, or their not being duly certified according to the statute, would be no ground for setting aside the election, unless some injury resulted from the omission, as if some electors were deprived of their votes, or the result of the election in some way was influenced by the mistake.

As to the 12th paragraph, the observation just made will apply to it. These objections to what may really be considered as omitting the doing of matters as to which the statute is considered as directory, have never been held of sufficient importance to avoid an election, unless it can be shown that some injustice has been done by the

* Hiring teams to convey voters to or from the poll was subsequently declared to be a corrupt practice by the Dominion Elections Act, 1874 (37 Vic., c. 9), ss. 96 and 98. See also *Young v. Smith*, 4 Sup. Ct. Can. 494.

omission—that voters who were entitled to vote have been deprived of their rights, and that if what the statute required had really been done, a different result would have followed. In the absence of this being shown, these objections would not have any weight; and this paragraph was given up on the argument.

The result is that all the paragraphs in the petition stand except the 12th: that all the preliminary objections are overruled except the 1st and the 8th, and if it is shown at the trial that the petitioner had not the necessary property qualification, he cannot be seated, but he may still show that respondent was not duly elected.

SPRAGGE, C.—I have entertained some doubt whether the voters' lists under the Provincial Statute, 32 Vic., cap. 21, are not conclusive, so far as the property qualification of voters is concerned, though I confess I feel the force of the reasoning by which an opposite conclusion is arrived at. Section 5 of the Act defines the property qualification entitling a person to vote. Then follow other sections, making provision for the registration of voters and the making out by municipal officers of lists of persons entitled to vote. Then follows sec. 7, subsec. 10, as follows: "No person shall be admitted to vote unless his name appears on the last list of voters made, certified, and delivered to the Clerk of the Peace at least one month before the date of the writ to hold such election; and no question of qualification shall be raised at any such election, except to ascertain whether the party tendering his vote is the same party intended to be designated in the alphabetical list as aforesaid." Sec. 41 provides for an oath being administered to a voter by the deputy return-officer. This oath is in proof (*inter alia*) of property qualification in the real estate in respect of which the voter's name appears on the voters' list; also as to his being a British subject; as to his being of age; and that he has not voted before at the election, and has not received or been promised anything to induce him to vote.

An oath being required as to the property qualification of the voter, is raising a question of qualification other than the question of identity, so that even at the election itself the voters' list is not conclusive as to the right of a person whose name is upon it, to vote: and if not conclusive there, it is, *a fortiori*, that it would not be conclusive upon a scrutiny upon the trial of an election petition.

Upon subsec. 10 alone I should have felt some doubt, for the defining of the qualification in sec. 5 was necessary to the registration of voters, and preparing the lists for election; and the provision in sec. 5 might well be introduced in the Act for that purpose only; but sec. 41 and the voters' oath show that the voters' lists were not intended to be conclusive. The voter is required to swear that at the final revision and correction of the assessment roll he was actually, truly, and in good faith possessed to his own use and benefit as owner, or tenant, of the real estate in respect of which his name is on the voters' list; and I agree in thinking that the fact whether he was so possessed is a fact necessarily open to question upon a scrutiny.

HAGARTY, C.J. C.P., concurred.

NORTH VICTORIA.

BEFORE MR. JUSTICE MORRISON.

LINDSAY, 4th to 10th November, 1874.

HECTOR CAMERON, *Petitioner*, v. JAMES MACLENNAN,
Respondent.*Hiring of teams—Bribery—Offers to bribe—Division Court bailiffs.*

Where the amounts paid for hiring teams were fair and reasonable, such hiring was not bribery under the Dominion Controverted Elections Act, 1873.

Where a canvasser for the respondent received money for hiring teams, and hired from those indebted to him, and agreed with them to give them credit for the respective amounts to be paid for the teams, such an arrangement was not evidence of corrupt practices.

Money given to a person to hire a team and to go round canvassing, held, on the evidence, not bribery.

One L., a tavern keeper, was told by H., one of respondent's canvassers, that he thought L. could get \$18 or \$20 from P., if he would stay at home during the election. L. expected that the money would be spent at his tavern, and showed that he did not know what was intended. Neither H. nor P. were examined :

Held, on the evidence, there was no actual offer to bribe.

Observations on the impropriety of Division Court bailiffs canvassing voters during an election.

The petition is set out on p. 384. The petitioner and respondent were the candidates at the election. After the decision of the Election Court on the preliminary objections, the petition was brought on for trial.

The Petitioner in person for petitioner.

Mr. John D. Armour, Q.C., for respondent.

The general facts of the case are set out in the judgment.

MORRISON, J.—I quite concur in the observations made by the petitioner, in closing his argument, that from the evidence throughout there is not the slightest suspicion of an imputation against the purity of the respondent's dealings in or about the election, or that the slightest suspicion exists that he did not honestly do his utmost to avoid any act and anything illegal or contrary to the

principles of the election law; while, on the other hand, he appears to have acted with the utmost care and caution, and with a true desire to avoid and prevent any improper act. I may further add that in taking into account that the riding consists of thirteen townships, in many of which the voters are sparse and reside apart, and have necessarily in many cases considerable distances to go to the polls, the expenditure of money—which principally, if not all, was spent in hiring conveyances—was, in my opinion, very moderate indeed.

I shall now proceed very briefly to state the conclusions I have arrived at on the charges of bribery and corrupt practices. As to the general point raised by the petitioner with respect to the hiring of the teams as being a corrupt practice, and so avoiding the election, I must follow the decision of the Election Court in this and other cases, which has decided, as I take it, that it is not a corrupt practice *per se* to hire vehicles, &c.; and I am of opinion that in this case the amounts paid for teams hired were only fair and reasonable, and that the hiring did not in any case amount to bribery.

In the particular charges, the first I have to consider is that of James Stewart, who was a member of the respondent's committee. It appeared he expended a sum of money—not more than \$40; \$30 of which he got from Capt. Sinclair, the agent of respondent. He accounted for the expenditure in the hiring of teams (a memorandum of which he kept at the time and produced), and in hiring a person to take out check-books to the polls. It is alleged that he paid \$4 improperly to one Carmichael, who was also on the committee, telling him he might require it during the election; that he applied a large portion of the \$30 contrary to his instructions (*viz.*, in paying for teams); and that instead of paying money to the parties, he merely gave them credit for the amounts. Mr. Carmichael testified that while he received the \$4 he did not require it, did not spend it, and that he retained it for the committee, and that he did not receive it for any

improper purpose. Mr. Stewart swore that the amounts paid for the teams were reasonable, and that he had hard work to get teams for the price, as the weather was rough, and that the amounts paid or credited for the teams had nothing to do with the way in which the owners should vote, and that there was no understanding about it. I have no reason to doubt the truth of Mr. Stewart's or Mr. Carmichael's statements, and I see no reason for thinking that they were dealing corruptly in the matter.

As to the charge against Alexander Fraser, who swears that he was neither a member of a committee nor an agent of the respondent, but that he acted as a mere supporter, it appears he received \$12 from Mr. Stewart and \$12 from Capt. Sinclair, which moneys it is quite clear he got for the purpose of hiring teams; and he swears he engaged five teams. It is alleged against Fraser that although he got the moneys to pay for teams, that the persons whose teams he hired were persons indebted to him. It appears that he was a blacksmith, and that he had accounts against them, and he told them respectively that he would credit them with the respective amounts, and that they said it would be all the same as money. It was suggested that he only hired four teams. Fraser, however, swears that he hired five, and it is urged that in obtaining the money, and not paying the parties money for the teams, is evidence of a corrupt act, or a corrupt arrangement between the giver of the money and Fraser; in other words, that it was not received by him for the purpose alleged. There was nothing in evidence to support this. The conduct of Fraser may be open to observation for engaging the teams of persons who were indebted to him; but I cannot see that this sharp practice on his part made the giving the money to him, or his mode of using it, bribery or a corrupt practice. Fraser did not appear to be prompted by a corrupt motive, but his mode of dealing was not straightforward.

As to the charge against Mr. Margach. He was an active canvasser for the respondent; he received \$24 from the

respondent for his own personal expenses; and it appears he made an arrangement with one Hartle to go round and canvass. Hartle had no team of his own, and Margach told him to hire a team, and gave him \$20 or \$30 to pay for hiring and personal expenses; and as Margach has not yet got an account of this money, it was urged that this engaging of Hartle was a corrupt act. I fail to see it in that light from the evidence adduced.

Then as to Hartle's dealings with Thomas Leary. From the latter's testimony it appears that, according to his own statement, Peck and Hartle were desirous that he should stay at home during the election; that Hartle said to Leary he thought he could get \$18 or \$20 from Peck if he did so. Leary stated that he expected it was to spend in his bar; and that having ascertained immediately after the conversation that the petitioner would be a candidate, he determined not to stay at home, and he voted for the petitioner. Hartle was not called; Peck was, but was not examined in relation to the matter. No doubt an offer to bribe is as bad as an actual payment; and if the case made out is that of an offer to bribe, as said by Martin, B. in the *Cheltenham case* (1 O'M. & H. 66), "the evidence required should be stronger than in respect to bribery itself; it ought to be made out beyond all doubt; because when two people are talking of a thing which is not carried out, it may be they honestly give their evidence, but one person may have understood what was said by another differently from what he intended." Here we have only Leary's evidence, and he does not prove an actual offer to bribe, but merely that Hartle said he thought he might get \$18 or \$20 from Peck if he would stay at home. Leary did not expect to get the money even if Peck assented, but that the money would be spent at his tavern. Leary showed in his evidence that he clearly did not understand what was intended. I do not think that I should be warranted upon such testimony to hold that there was an actual offer to bribe,

and particularly without Peck and Hartle being examined on the subject.

With reference to the McGillivrays' case. It is evident that the McGillivrays were in the hands of the bailiff from time to time, and very probably they supposed McSwain had the Taylor execution when he called with Boadway and asked how the McGillivrays intended voting, and finding that McSwain and his companion were canvassing for the respondent, they thought it better not to vote, not because any undue influence in fact was used, but upon the expectation that they would receive further favors from the bailiff by adopting that course. I don't hesitate to say that it is a highly improper act for the bailiff to canvass parties against whom he had an execution; I will further add, canvassing at all. We all know that persons in the station of life of the McGillivrays, when in pecuniary difficulties, may be strongly influenced by a bailiff without anything being said, except how they are going to vote; and the Legislature would do well to prohibit canvassing by Division Court bailiffs.

On the whole, I am of opinion that the petitioner has failed to prove that any bribery or any corrupt practice was resorted to by the respondent or his agents.

A scrutiny of the votes having taken place, it was found that both candidates had an equal number of votes, and it was then agreed that the election should be declared void, which was ordered.

(9 *Commons Journal*, 1875, p. 16.)

NORTH SIMCOE.

BEFORE THE ELECTION COURT.*

TORONTO, 26th June and 16th July, 1874.

HEZEKIAH EDWARDS, *Petitioner*, v. HERMAN HENRY
COOK, *Respondent*.*Preliminary objections—Whether petitioner disqualified by bribery, &c.—
Validity of entry of voter's name on assessment roll.—Champerty.—
Fraud.*

The Court will not go behind the voters' list to inquire whether a voter's name was entered upon the assessment roll in a formal manner or not.

A duly qualified voter is not disqualified from being a petitioner, on the ground that he has been guilty of bribery, treating or undue influence, during the election.

Disqualifications from corrupt practices on the part of a voter or candidate arise after he has been found guilty, and there is no relation back.

It is not a champertous transaction that an association of persons, with which the petitioner was politically allied, agreed to pay the costs of the petition. Even if the agreement were champertous, that would not be a sufficient reason to stay the proceedings on the petition.

A charge that the petition was not signed by petitioner *bona fide*, but that his name was used *mala fide* by other persons, is a matter of fact to be tried, and cannot be raised by preliminary objection.

The petition contained the usual charges of corrupt practices.

The respondent filed preliminary objections, submitting:

1. That the petitioner was not duly qualified to vote at the said election, whereby he was incapable of being a petitioner.

2. That the petitioner was not actually and *bona fide* the owner, tenant or occupant of the real property of the value of \$400, in respect of which his name was entered on the list of voters used at the said election, and was not legally entered on the last revised assessment roll, upon which the said voters' list was founded as such owner, tenant or occupant, because, as the fact was, one Faragher was assessed in respect of the said real property as tenant, and one Arnall as owner of the same, at the value of \$200, which was the full value thereof, and the said Faragher, at the time of the making of the said

* The Judges were the same as in the *North Victoria* case (*ante* p. 584).

assessment, was in actual possession of the said property as such tenant, and no appeal was had against the said assessment of the said Faraghar, and after the delivery of the assessment roll to the clerk of the municipality by the assessor, the said Faragher ceased to be, and the petitioner became, tenant of the said property at a monthly rent of five dollars and fifty cents, and thereupon the said petitioner appeared before the Court of Revision for the said municipality, and fraudulently procured the name of the said Faraghar to be erased from the said roll and the name of the petitioner to be substituted therefor, and fraudulently procured the value of the said property to be inserted in the said roll at \$600, in order to give the petitioner an apparent qualification to vote, and no notice of the said application of the petitioner was given either to the said Arnall or Faraghar, or any other person, or by public notice of any kind, but the said Court of Revision, well knowing the object of the said petitioner in procuring the said alterations in the roll to be made, and fraudulently intending to carry out the said object, made the said alterations, without which the petitioner would not have been entitled to vote; and the respondent submits that by reason of the matters aforesaid the said alterations were and are void, and the said Court of Revision had no jurisdiction, under the circumstances aforesaid, to make the said alterations, and the petitioner was not entitled to vote at the said election, and was therefore incapable of being a petitioner.

3. That the petitioner was before, during, and after the said election, guilty of bribery, treating and undue influence, whereby his status as a voter and a petitioner was annihilated.

4. That before the filing of the petition a champertous bargain was made between the petitioner and certain other persons known as the Liberal-Conservative Association, whereby it was agreed that the costs of the said petition should be paid by the persons known as the Liberal-Con-

servative Association aforesaid, and whereby the name of the petitioner should be used.

5. That the petition was not signed by the petitioner *bona fide* with intent on the part of the petitioner to prosecute it, but that his name was being used *mala fide* by other persons, who were the real petitioners.

A summons having been obtained to strike out the preliminary objections,

Mr. Bethune, for respondent, showed cause. He referred to *Regina v. Court of Revision of Cornwall* (25 Q. B. 286); *Wallis v. Duke of Portland* (3 Ves. 494); *Carr v. Tannahill* (30 Q. B. 217, 31 O. B. 201); *In re National, &c., Association* (4 DeG. F. & J. 78).

Mr. McCarthy, Q.C., for petitioner, referred to *Topham v. Duke of Portland* (32 L. J. Chy. 606); *Lyme-Regis case* (1 P. R. & D. 28).

RICHARDS, C. J., delivered the judgment of the Court.

As to the first preliminary objection, it is a matter of fact, whether the petitioner was duly qualified or not, and that of course may be tried.

As to the second preliminary objection, we fail to see how the facts show any actual fraud in relation to placing the petitioner's name on the list of voters. The facts themselves seem to show that what was done was what really ought to have been done, and the complaint just amounts to this, that it was not done in the formal manner in which it ought to have been done. Apparently the only fraudulent thing about the matter is the word "fraudulent." At the time this petitioner had his assessment raised on the assessment roll from two to six hundred dollars, he was paying a rent which would indicate a larger value of the property than \$600; and there is nothing to show, at the time it was done, that any election was likely to occur for which a fraudulent change would be made. We think we should not go behind the voters' list to imagine fraud from the facts stated in this preliminary objection.

Then as to the third preliminary objection. In the *North Victoria case*, (*ante* p. 584) reference is made to the present state of our law on the subject. Some authorities seem to show that a party bribing, who is not a candidate, is not disqualified from voting in consequence of violating the law in that respect. But if the petitioner was a duly qualified voter before and at the time of the election, and the only ground of disqualification is that he was guilty of treating, bribery and undue influence, during the election, we hardly think that would destroy his right to be a petitioner.

The subject is referred to and discussed in the *North Victoria case*, and we are not now prepared to decide against this petitioner on this preliminary objection.

We are inclined to think if the petitioner is a person who was duly qualified to vote at the election to which the petition refers, that is sufficient—that the fact that he may have done something at the election which would justify the Judge in striking out his vote, would not create such a disqualification as to destroy his status as a petitioner. It could not by relation be held to make him a person not duly qualified to vote at the election. Even in England, with the important clauses in the Corrupt Practices Act of 1854, and the Parliamentary Election Act of 1868, referring to this subject, which are omitted in our Acts, it is held that disqualifications do not arise until after the time the parties have been *found guilty* of the bribery.

In the *Launceston case* (L. R. 9 C. P. 626), the Court of Common Pleas held that Col. Deakin's disqualification to be elected or sit in the House of Commons existed for the *next* seven years after he was found guilty. His election was declared void; but the opposing candidate was not held to be elected, as would have been the case had the disqualification begun prior to the election which existed after he was found guilty.

The same penalty, under the English Act, attaches to any person other than the candidate *found guilty* of

bribery in any proceedings in which, after notice of the charge, he has had an opportunity of being heard. The incapacity exists during the seven years next after the time at which he is found guilty.

And the sixth section of the English Act as to corrupt practices, directs the revising barrister, when it is proved before him that any person who claims to be placed on the list of voters has been *convicted* of bribery, etc., at an election, or that judgment has been obtained for a penal sum recoverable in respect of bribery, etc., against any person who claims to be placed on the list of voters for any county, he shall expunge his name from the list, if it be on the list, or disallow his claim to be put on the list. These statutes contemplate the party being found guilty before the penalties attach. The decision of Mr. Justice Blackburn in the *Bewdley case* (1 O'M. & H. 176) is to the same effect as the latest case referred to in the Common Pleas.

As to the alleged champerty; if the petitioner could not enforce the alleged bargain which the persons known as the Liberal-Conservative Association made with him as to paying costs, that does not establish the fact that this petitioner has not a right to present a petition. His right arises from his being an elector, duly qualified to vote at the election, not from any interest acquired by virtue of a champertous bargain. It may be doubted whether a proceeding of this kind is one to which the ordinary rules relating to champerty can apply.

One of the latest cases I have seen on the subject is *Hilton v. Woods*, (L. R. 4 Eq. 432). There the plaintiff was not aware that he was the owner of certain coal mines until a Mr. Wright informed him of it. An engagement was finally made between him and Wright, that in consideration that he would guarantee the plaintiff against any costs, Wright should have a portion of the value of the property. It was contended on the argument that the bill must be dismissed on the ground that the agreement entered into between the plaintiff and Mr. Wright

amounted to champerty and maintenance, and was an illegal contract. Sir R. Malins, V. C., in giving judgment, said: "I have carefully examined all the authorities which were referred to in support of the argument (as to dismissing the bill), and they clearly establish that wherever the right of the plaintiff in respect of which he sues is derived under a title founded on champerty or maintenance, his suit will on that account necessarily fail. But no authority was cited, nor have I met with any, which goes the length of deciding that when a plaintiff has an original and good title to property, he becomes disqualified to sue for it by having entered into an improper bargain with his solicitor as to the mode of remunerating him for his professional services in the suit or otherwise. . . . If Mr. Wright had been the plaintiff suing by virtue of a title derived under that contract, it would have been my duty to dismiss the bill. . . . In this case the plaintiff comes forward to assert his title to property which was vested in him long before he entered into the improper bargain with Mr. Wright, and I cannot therefore hold him disqualified to sustain the suit." He refused to dismiss the bill.

Here the petitioner's right is not acquired by virtue of any bargain with the Liberal-Conservative Association; and by analogy to the above case, even if the alleged bargain were champertous, which I am by no means inclined to think it was, that would be no reason for staying the proceedings on this petition. See also *Carr v. Tannahill et al.* (31 Q. B. 210).

We do not consider that the objection, as stated, to the petitioner's right to vote at the election, and his consequent inability to petition, arises under the 71st section of the Ontario Act, 32 Vic., cap. 21, or a similar provision, section 3, in the Corrupt Practices Act of Canada, 23 Vic., cap. 17, passed in 1860.

It is said that the fact that a third person was to pay the expenses of the petition, and had in fact paid for the last petition, was not considered to be any impediment to

the hearing: *Lyme-Regis case* (1 P. R. D. 37); Wolferstan 44, 14.

As to the last preliminary objection, that the petition was not signed by the petitioner *bona fide*, it is stated in Wolferstan on Elections, 44, that where fraud was proven against the petitioner, the petition was not heard: *Canterbury case* (Cliff. 361). Such, it is presumed, would also be the decision in the case of a petition proved to have been signed *mala fide* by some person on behalf of the real petitioners: *Sligo case* (Fal. & Fitz. 546). But the fact that a third person was to pay the expenses was not considered an objection to the hearing: *Lyme-Regis case* (1 P. R. & D. 37). At page 14 of the same work it is stated that if fraud or other improper influence has been used in obtaining the subscription of names to a petition, such a petition doubtless would not be proceeded with.

The result is, that as to the first preliminary objection, that is triable before the Election Judge as a matter of fact. The second preliminary objection is disallowed, as also the fourth, with regard to champerty. As to the fifth, it is a matter of fact whether he is the petitioner or whether any fraud has been practised on him. The mere fact that it has been agreed between him and others that he shall proceed with the petition in his name, and that they will contribute towards paying the expenses, can be no objection to the petition as we understand the law.

NORTH SIMCOE.

BEFORE MR. JUSTICE GWYNNE.

BARRIE, 10th and 11th November, 1874.

HEZEKIAH EDWARDS, *Petitioner*, v. HERMAN HENRY
COOK, *Respondent*.*Admission of bribery by agent—Candidate's expenditure at a former election—Evidence.*

Before the trial the respondent served a notice upon the petitioner, admitting that the election must be avoided on the ground of bribery by an agent without his knowledge or consent. Such admission was acted upon at the trial, and the election avoided accordingly.

A candidate, when examined as a witness at an election trial, may be asked his expenditure at former Provincial and Dominion elections at which he was a candidate.

The petition contained the usual charges of corrupt practices. The proceedings before the Election Court are set out on p. 617.

Mr. D. McCarthy, Q.C., and Mr. Boys, for petitioner.

Mr. Bethune and Mr. W. Lount for respondent.

Before the petition came on for trial, the respondent served a notice upon the petitioner, admitting that the election must be avoided on the ground of bribery by an agent without the respondent's knowledge or consent. At the trial the respondent was examined, and admitted that he had instructed his attorney to give the notice admitting the election was void. Counsel for the petitioner agreed to accept the admission, and

MR. JUSTICE GWYNNE thereupon declared the election void.

The respondent had been a candidate for election to the Legislature of Ontario in 1871 (see *North Simcoe case*, ante p. 50); and also a candidate for election to the House of Commons in 1872, when he was elected; and again in 1874, the election in question at this trial. During his examination as to this last election, he was asked, "What was your expenditure in 1871?"

Mr. Bethune objected to any evidence except as affecting the last election.

Mr. JUSTICE GWYNNE allowed the question.

The respondent was then examined as to his expenditures at the Provincial election of 1871, and the Dominion elections of 1872 and 1874, at each of which he had been a candidate.

(9 *Commons Journal*, 1874, p. 17.)

KINGSTON.

BEFORE CHIEF JUSTICE RICHARDS.

KINGSTON, 17th to 21st November, 1874.

JOHN STEWART, *Petitioner*, v. SIR JOHN ALEXANDER
MACDONALD, *Respondent*.

Setting aside election—Drinking custom—Meetings at taverns—Mixed motives—Excessive expenditure—Corrupt practices—Personal knowledge—Costs.

The Imperial and Dominion Election Laws, as to corrupt practices and their consequences, compared and considered.

It is a general rule that no man can be treated as a criminal, or mulct in penal actions for offences which he did not connive at; and it is settled law that enactments are not to be given a penal effect beyond the necessary import of the terms used. But the Election Laws are not to be so limitedly construed by an Election Judge; and for civil purposes they are more comprehensive, and reach a candidate whose agents bribe in his behalf, with or without his authority. Where the disqualification of a candidate is sought they are to be construed as any other penal statutes, and the candidate must be proved guilty by the same kind of evidence as applies to penal proceedings.

The avoidance of an election for an act of bribery committed by the agent of a candidate is a civil proceeding, and is not brought about to punish the candidate, but to secure an unbiassed election.

The general practice which prevails here of persons drinking in a friendly way when they meet, would require strong evidence of a profuse expenditure of money in drinking, to induce a Judge to say it was corruptly done, so as to make it bribery or treating at common law.

Meetings for promoting the respondent's election were held at public houses with the object of inducing the owners to support the respondent at the election, and because the weather was cold and meetings could not be held in the open air. No evidence was given by the petitioner that equally convenient places, and such as were more proper to be used for that purpose, could be obtained:

Held, that as the respondent and his friends had a legitimate motive for holding their meetings at such houses, although their other motives might not be legitimate, no corrupt act had been committed.

Money had been contributed by the respondent and by his friends for the purposes of the election, which had been placed in the hands of one C., a personal and political friend of respondent, who gave it without any instructions or warnings to such committee-men as applied for it. A great deal of this money was spent in corrupt purposes, in bribery, and in treating to the extent of avoiding the election. The respondent in his evidence stated that he did not, directly or indirectly, authorize or approve of or sanction the expenditure of any money for bribery, or a promise of any for such purpose, nor did he sanction or authorize the keeping of any open house, and that he was not aware that any open houses had been kept, and that he always impressed on everybody that they must not violate the law. There was no affirmative evidence to show that the money which the respondent knew had been raised for the purposes of the election was so large that as a reasonable man he must have known that some portion of it would be used for corrupt purposes.

Held, that looking at the whole case, and at this branch of it, as a penal proceeding, the respondent should not be held personally responsible for the corrupt practices of his agents.

The petitioner having been warranted in continuing the inquiry as to the personal complicity of the respondent with the illegal acts of his agents, was held entitled to the full costs of the trial.

The petition contained the usual charges of corrupt practices.

Mr. Bethune and Mr. Britton for petitioner.

Mr. R. T. Walkem for respondent.

The election took place on the 22nd and 29th January, 1874. The total vote was 1,640, of which the respondent received 831 and Mr. John Carruthers 801.

The facts and the arguments of counsel appear in the judgment of the court.

RICHARDS, C. J.—As this case is tried under the provisions of the Dominion Acts of 1873, cap. 27 and 28, it must be borne in mind that these statutes are not so broad, so far as relates to acts which will avoid an election, nor as to the consequences to the candidate of complicity in what may be considered corrupt practices, as the English Acts, the statutes of Ontario, and the Dominion Elections Act of last session.

The Imperial statute, 17-18 Vic., cap. 102, the Corrupt Practices Prevention Act of 1854, defines minutely the offences of bribery, treating and undue influence. It states that the following persons shall be deemed guilty of bribery, and shall be punished accordingly:

1. Every person who shall directly or indirectly, by himself or by any other person on his behalf, give, lend, or agree to give or lend, or shall offer, promise, or promise to procure, or to endeavor to procure, any money or valuable consideration to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce any voter to vote, to refrain from voting, or shall corruptly do any such act as aforesaid on account of such voter having voted or refrained from voting at any election. 2. Procuring or agreeing to procure a place, office or employment for a voter or any other person. 3. Making any gift, loan, offer, procurement or agreement as aforesaid to or for any person to induce such person to procure or endeavor to procure the return of any person to serve in Parliament, or the vote of any voter at any election. 4. Any person who shall in consequence of any such gift, loan, offer, &c., procure or engage, promise, or endeavor to procure the return of any person to serve in Parliament, or the vote of any voter at any election. 5. Any person who shall advance, or pay, or cause to be paid, any money to or for the use of any other person, with intent that such money or any part thereof shall be expended in bribing at any election, or who shall knowingly pay or cause to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election. The section then declares that any person so offending shall be guilty of a misdemeanor, and liable to forfeit £100 to any person who shall sue for the same.

Section 3 makes the voters who receive money, or make agreements to receive money, gifts, &c., for voting or refraining to vote, and for receiving money after an election for voting or refraining from voting, guilty of bribery. These persons are declared guilty of a misdemeanor, and liable to forfeit £10 to any one suing for the same. The 4th section defines corrupt treating; and the 5th undue influence.

The 36th section declares, "If any candidate at any election for any county, city or borough, shall be declared by any election committee guilty, *by himself* or his agents, of *bribery, treating or undue influence*, at such election, such candidate shall be incapable of being elected or sitting in Parliament for such county, city or borough, during the Parliament then in existence."

The English Parliamentary Elections Act of 1868, defines corrupt practices to mean bribery, treating and undue influence, or any of such offences as defined by Act of Parliament or recognized by the common law of Parliament. By section 11, subsection 12, at the conclusion of the trial, the Judge shall determine whether the member whose return or election is complained of, or any and what other person was duly returned or elected, or whether the election was void. By subsection 14, when there is a charge in the petition of any corrupt practice having been committed at the election to which the petition refers, the Judge shall, in addition to such certificate, and at the same time, report in writing to the Speaker whether any corrupt practice has or has not been proved to have been committed by or with the knowledge and consent of any candidate at such election, and the nature of such corrupt practice. Sec. 15 provides as to the effect of the Judge's report as to corrupt practices having extensively prevailed, having the same effect as the report of a committee as to issuing a commission of inquiry.

Under the 43rd section of the Act, when it is found by the report of the Judge that bribery has been committed with the knowledge and consent of any candidate at an election, such candidate shall be deemed to have been personally guilty of bribery at such election, and his election, if he has been elected, shall be void, and he shall be incapable of being elected to and of sitting in the House of Commons during the seven years next, after the date of his being found guilty, and he shall further be incapable, during the said period of seven years: (1), of being registered as a voter, or voting at any election ;

(2), of holding any office under certain Acts of Parliament recited; (3), of holding any judicial office, or of being appointed a justice of the peace.

The Canadian statutes under which we are now acting make the following provisions applicable to these subjects. 36 Vic., cap. 27, section 18, declares :

“ No candidate shall, directly or indirectly, employ any means of corruption by giving any sum of money, office, place, &c., or any promise of the same, nor shall he, either by himself or his authorized agent for that purpose, threaten any elector with losing any office, salary, income or advantage, with intent to corrupt or bribe any elector to vote for such candidate, or to keep back any elector from voting for any other candidate. Nor shall he open and support, or cause to be opened and supported, at his costs and charges, any house of public entertainment for the accommodation of the electors. And if any representative returned to the House of Commons is proved guilty before the proper tribunal of using any of the above means to procure his election, his election shall be thereby declared void, and he shall be incapable of being a candidate, or being elected or returned during that Parliament.”

The next statute in the Acts of that session, the “ Controverted Elections Acts of 1873,” defines corrupt practices to mean bribery and undue influence, treating, and other illegal and prohibited acts in reference to elections, or any of such offences as defined by Act of the Parliament of Canada. This definition of corrupt practices, it will be seen, differs from that contained in the Imperial Act, and it also differs slightly from that contained in the Ontario Act. The general provisions of the Dominion statute as to the trial of the controverted elections, and the report to be made by the Judges trying the same, seem to have been taken from the English Act, but the 43rd section of that Act, already quoted, for the punishment of corrupt practices, is omitted, as well as the 44th section imposing a penalty for employing a corrupt agent, and section 45 disqualifying persons other than a candidate

found guilty of bribery from being elected or sitting in Parliament, and other disqualifications as under sec. 43.

It may be as well to note here that the 46th section of the English statute refers to the disqualifying persons under the 36th section of the Act of 1854; as to a member guilty of corrupt practices other than personal bribery, within the 43rd section of that Act, the report of the Judge was to be deemed substituted for the declaration of an election committee. Now the only Dominion Act applicable to this case, which declares the punishment of bribery, is section 18 of 36 Vic., cap. 27.

By the common law of Parliament there is no doubt the respondent is so far compromised by the acts of his agents that his seat must be vacated in consequence of their admitted acts, and also by the acts committed by them as shown by the evidence given on the trial.

The further inquiry which was gone into was with a view of having the respondent declared guilty of employing, directly or indirectly, means of corruption by giving money, employment, gratuity, reward, or promise of the same, with the intent to corrupt or to bribe electors to vote for him, or to keep back electors from voting for any other candidate, or that he opened or supported, or caused to be opened or supported, at his costs and charges, houses of public entertainment for the accommodation of the electors.

Mr. Bethune, who probably has had as large experience as any counsel at the bar in this province in these election cases, admitted that he could not ask the Court to decide on the evidence that the respondent had been guilty, or had knowledge, of and consented to any distinct act of individual bribery, but he contended that there had been an expenditure of money to influence a class of votes, viz., keepers of public houses, and that this expenditure was with the knowledge and consent of the respondent. The object of holding meetings at public houses was to influence the votes of the persons who kept these houses,

and to induce them to support the respondent at the election. Mr. Noble's evidence shows that \$10 a night was paid for the use of a room when \$5 would have been sufficient; that there was an expenditure of \$40 in treating, which would bring the case within the second branch of sec. 18 of the Dominion Act, 36 Vic., c. 27. He referred to the *Tamworth case* (1 O'M. & H. 86-7-8); *Coventry case* (*ibid.* 98); *Hastings case* (*ibid.* 218). The evidence shows that respondent desired to get the influence of this class for himself, or to prevent his opponent getting them. Then there was no account of the expenditure of the money in the several wards; respondent was bound to take care that the fund was properly applied, and it was incumbent on the respondent to call Mr. Campbell to show how the money had been expended, as he was his special agent. He also referred to the *Bewdley case* (1 O'M. & H. 18, 21).

Mr. Britton, on the same side, contended that the effect of the respondent's evidence was: That money is improperly expended at all elections; that there was some expended at his election in 1872 for bribery. He thought more money would be required for the contest in 1874 than in 1872. He furnished the money without instructions as to how it should be used. It is admitted that it was improperly used, therefore the respondent is personally responsible.

Mr. Walkem, for the respondent, contended in effect: That it was not the duty of the respondent to call Mr. Campbell. If the respondent had claimed that there was no improper expenditure of money, and that his seat ought not to be vacated, then he might be asked to show by Mr. Campbell the terms on which the money had been placed in the hands of persons who used it improperly. Now, however, the onus of proof is changed, the petitioner ought to show that the respondent has been guilty of acts which affect him personally with bribery or keeping open house. That has not been done, and the Court will not presume that acts of this sort were done, unless they are

proved by satisfactory evidence. The respondent's evidence as to what he thought was generally done at elections, given frankly and fairly, was not to be construed as admitting that he knew such things were done at this election, and that he was a consenting party to such acts. Supposing the whole amount expended on behalf of respondent \$2,500 or even \$3,000, that was not unreasonable. Besides the regular meetings, two or three in a night, at which the respondent addressed the people, there were ward meetings in each of the seven wards every night; besides this, canvassers had to be hired, and cabs paid for their use; all these expenses during a canvass of four weeks, it might be reasonably expected, would swallow up the sum mentioned without respondent supposing any money expended for bribery. There were about 1,600 votes polled in the city. The hiring of the rooms at the taverns was absolutely necessary, as none others could be got, and the fact that innkeepers might exert themselves for the respondent could not fairly be considered as bribery. No attempt was made to show that respondent was aware, or that the fact was, that rooms were hired of any persons who were opposed to respondent, to influence their votes; on the contrary, he (respondent) understood that the meetings were held in the houses of persons who were his supporters. Besides this, printed copies of the law were distributed amongst the committees so that they might not violate it, and respondent always impressed on everybody that they must not violate the law.

The first question is as to the nature of the evidence required to affect the personal status of the respondent so far as to disqualify him from being elected to serve in this present Parliament. The law, as it exists in England, is briefly referred to in the last edition of Bushby's *Manual of the Practice of Elections*, p. 114. As to the person bribing, he may be any one who does the prohibited acts, "directly or indirectly," that is, by any one who either does them himself or authorizes another to do them

for him. As this is also the case at common law, it need not be dwelt upon ; the next words are “ by himself or by any other person on his behalf,” words which will carry two senses according to the purpose for which they are construed. When sought to be enforced penally they will mean precisely the same as does the preceding phrase.

It is a general rule that no man can be treated as a criminal, or mulcted in penal actions, for offences which he did not connive at ; nor does the statute authorize any infraction of the rule. The person to be deemed guilty of bribery is spoken of throughout the sections as doing the guilty act, the addition that he does it by another on his behalf need only mean that he does it through one whom he has authorized for that purpose ; and it is settled law, that enactments are not to be given a penal effect beyond the necessary import of the terms used. But in the next place the words need not be so limitedly construed by an Election Judge ; and for civil purposes they are far more comprehensive, and reach every one whose agents bribe in his behalf either with or without his authority.

The first question before an Election Judge in such cases usually is as to the bribery having been effected (so too it is now enacted that any charge of a corrupt practice may be gone into before proof of agency unless the Judge otherwise direct). The second question is as to the relation existing between the person effecting it and the candidate ; and if it appears that they stand in the relation of agent and principal in other respects, the candidate will not escape the result of bribery, the loss of his seat and the consequent disqualification, merely because he gave his agent no authority to bribe. This appears at first sight unjust and a hardship ; no doubt it must be when a seat is vacated for bribery of which the candidate was wholly unconscious. But the avoidance of an election under such circumstances is a purely civil consequence. It is not brought about in order to punish the candidate, but to secure an unbiassed election. Were his punishment the object, of course *a guilty knowledge would have to be*

proved against him, but in that case the penalty would probably be of a graver kind, *and would not have been locally limited*; whereas in the actual state of the law he suffers no other penalty than the loss of his seat, and is eligible immediately for any place other than that at which he has been unseated.

At page 135 it is stated that formerly, if any candidate was declared by an election committee guilty, by himself or his agents, of bribery at such election, he not merely lost his seat, but he became incapable of being elected or sitting in Parliament for the same place during the then Parliament. And this is still the law when he is found guilty, by the report of a Judge upon an election petition, of bribery through his agents without his own knowledge and consent. But if the Judge reports that bribery has been committed by or with the knowledge and consent of the candidate as defined above, he is to be deemed personally guilty of bribery, and in addition to his election being made void, incapable of sitting in Parliament for seven years, besides incurring other disabilities.

I come to the conclusion, inasmuch as the penalty imposed by the statute of 1873 is not merely that which pertains to the locality, but to the person of the candidate to be disqualified, and applies to all constituencies during that Parliament, that that Act is to be construed as any other penal statute, and the respondent must be proved guilty by the same kind of evidence as applies to penal proceedings.

In the *Tamworth case* (1 O'M. & H. 84) Mr. Justice Willes is reported to have said, first ascertaining upon whom rests the burden of establishing the affirmative, "You ought to judge of a case just as much by evidence which might have been produced if the affirmative were true, and which has not been produced, as by the evidence which has been laid before the Court. In other words, no amount of evidence ought to induce a judicial tribunal to act upon mere suspicion, or to imagine the existence of evidence which might have been given by the peti-

tioner, but which he has not thought it to his interest actually to bring forward, and to act upon that evidence, and not upon the evidence which really has been brought forward.

“The second principle, which is more particularly applicable to circumstantial evidence, is this: That the circumstances to establish the affirmative of a proposition, where circumstantial evidence is relied upon, must be all, such of them as are believed, circumstances consistent with the affirmative; and that there must be some one or more circumstance believed by the tribunal, if you are dealing with a criminal case, inconsistent with any rational theory of innocence, and when you are dealing with a civil case (otherwise expressed, though probably the result is for the most part the same), proving the probability of the affirmative to be so much stronger than the negative, that a rational mind would adopt the affirmative in preference to the negative.”

It having been admitted that respondent has not been personally guilty of bribery, what evidence is there to show that bribery took place with his knowledge and consent?

First, as to treating; that has always been punishable at common law as a species of bribery, the only difference being that the corrupting medium was food and drink, or both. But treating in the sense of ingratiati on (or, to use the ordinary language of the country, as being considered a good fellow) by mere hospitality, or even to the extent of profusion, it was doubted if it was struck at by the common law: Willes, J., *Lichfield case* (1 O'M. & H. 25). If it was shown that there was an organized and general system of treating in all directions on purpose to influence voters, that houses were thrown open where people could get drink without paying for it, such an election would be void at the common law: Bushby, p. 138.

The general practice which prevails here amongst classes of persons, many of whom are voters, of drinking in a

friendly way when they meet, would require strong evidence of a very profuse expenditure of money in drinking to induce a Judge to say that it was corruptly done, so as to make it bribery or come within the meaning of "treating" as a corrupt practice at the common law.

Now, when the respondent in his evidence speaks of expending money in treating by his friends during the canvass, and when such expenditure might be within reasonable bounds, not amounting to bribery, and he said he had no apprehension they would expend any money in bribery, and the evidence does not show that he had knowledge of and consented to such extravagant expenditure in eating and drinking as would amount to bribery, I do not feel warranted in saying that such a corrupt practice existed with his knowledge and consent, particularly as he closes his evidence with the statement that he did not, directly or indirectly, authorize or approve of or sanction the expenditure of any money for bribery or a promise of any for such purpose, nor did he sanction or authorize the keeping of any open house, and he was not aware that any open houses were kept. I arrive at this conclusion now with less hesitation in consequence of the different provisions contained in the Dominion Act of 1874 and the Ontario statutes, from those contained in the statutes under which we are now acting. The corrupt practices intended to be prevented by these statutes are so clearly defined that no candidate need be involved in difficulty as to expenditures at an election unless he deliberately determines to violate the law, and the precautions taken by these statutes to compel a disclosure of money expended on behalf of a candidate will aid in deterring improper expenditures of money. While on this subject, it may be as well to point out the omission in the Dominion Statute of the provision in the English Act of 1854, by which the seat may be avoided by the corrupt acts of an agent, and the candidate prevented from standing for that constituency during the then Parliament, when it was not shown that the candidate authorized the corrupt act,

and when the additional personal disqualifications, as referred to in the Dominion Act of 1874, would not attach.

The next question is whether the holding of meetings at public houses, when the probable effect of doing so would be to make the proprietors use their influence in favor of the respondent, is not bribery or a corrupt act.

The respondent in his evidence said there were sub-committees in every ward. The houses in which they met were small ; as the weather was cold, meetings could not be held in the open air, and the tavern-keepers then made it their harvest, and as only a few could attend at each meeting, they were the more numerous, and as both parties were equally active and held meetings, it was important to have the last word, and so the meetings were more numerous, and in that way the expenditure was great. In another part of his evidence he said the calling of meetings at public houses was to have people to talk to. Inn-keepers are of course a power in their localities ; and that may have been a reason amongst others for holding meetings there, and another to prevent the other side from getting them. He was not aware of any meetings of his friends at any inn where the party was not a supporter of his : " Of course, when you get a supporter you want to keep him." Again, he said, " I did not consider holding meetings in the taverns and paying for the use of the rooms would be a violation of the law."

There is no doubt that respondent and his friends expected to reap an advantage by holding meetings at public houses. The very strong remarks by the Judges in the cases referred to by Mr. Bethune as to the impropriety and danger of holding meetings of candidates and their committees in inns are appropriate, and ought, and will no doubt hereafter be considered, and have their influence with candidates at future elections. In the argument it was urged that at the inclement season of the year when the election took place it was exceedingly inconvenient, if not impossible, to get rooms in which to hold meetings and committee meetings unless at inns, and

consequently that it was a necessity that this should be done, and that both parties yielded to this necessity, and held the meetings and committee meetings at inns.

It seems to me that this view was reasonable, and that the fact of the opponents of the respondent holding meetings at inns was a circumstance to show that it was necessary that this should be done at that season of the year. Not that the respondent, because his opponents did an equivocal or illegal act, was at liberty to do a similar act, but that they all thought, under the circumstances, that it was the right and proper thing to be done. As no evidence was given on the trial to show that equally convenient places, and such as were more proper to be used for that purpose, could then be obtained, I think I ought to hold that respondent and his friends had a legitimate motive for holding their meetings in these houses, although they might have had other motives which are not so legitimate.

I find this language used by Baron Bramwell (whose "brilliant common sense" is the admiration of the English Bar) in the *Windsor Election case* (31 L. T. N. S. 135): "The respondent has declined to answer whether, when he made certain gifts of coals and food to a number of poor cottagers, on occasion of a flood, there being voters and non-voters amongst them, he had in view the election for the borough of Windsor." The learned Baron proceeds: "Why, it is certain that it must have been present to his mind; a man cannot suppose a thing of this sort is a matter of indifference, that it operates in no way at all; he cannot suppose that it operates unfavorably to him; therefore he must suppose that in some way or other it will to a certain extent operate favorably. But there is no harm in it if a man has a legitimate motive for doing a thing, although in addition to that he has a motive which, if it stood alone, would be an illegitimate one. He is not to refrain from doing that which he might legitimately have done on account of the existence of this motive, which by itself would have been an illegitimate

motive." In the view I take of this question I do not think I can say that this was a corrupt act committed with the knowledge and consent of the respondent.

It clearly appears that the respondent himself contributed \$1,000, and his friends to his knowledge a much larger sum, for the purposes of his election; and that a sum probably equal in the whole to \$3,000 was raised for that purpose, the larger part of which passed into the hands of Mr. Alexander Campbell, a warm personal and political friend of the respondent; that no consultation took place between them as to how or in what way the money should be used, or what, if any, precautions were to be taken to prevent an illegal or corrupt use of this large sum of money; that Mr. Campbell, as far as we know, gave it to all or any of the committee-men that applied for it, who were employed in furthering the respondent's election, without any instructions from him as to how it was to be spent, or warnings against an improper use of it; that a great deal of this money was admittedly spent in corrupt purposes, some in direct bribery, and in treating, to the extent of avoiding the election; and some of the parties who made this improper use of the money, in giving their evidence, spoke of it in a way which might induce those who heard them to suppose that they rather took pride in having violated the law, rather than feeling that they had done acts which were culpable, disreputable as far as they were concerned, and seriously injurious to the candidate to whom they pretended to be friendly.

It cannot be denied, judging from the demeanor and manner of giving evidence of some of these witnesses, that Mr. Campbell was guilty of great carelessness, if not reckless indifference to consequences, in placing the unrestricted use of considerable sums of money in such hands as these, and in this respect he certainly failed to serve the true interests of the friend for whom he was acting, and apparently showed an indifference as to whether the law of the land was violated or not, which

certainly is not commendable, to say the least of it, in a gentleman in his position.

I shall refer to the *Bewdley case* (1 O'M. & H. 18). There it appears, from the report, that the respondent had deposited as much as £11,000 in the hands of one Pardoe, directing him in his letters to apply that money honestly, but not exercising, either personally or by any one else, any control over the manner in which that money was spent, and not in fact knowing how it was spent. The learned Judge before whom the case was tried, Mr. Justice Blackburn, said: "Upon that I can come to no other conclusion than that the respondent made Pardoe his agent for the election to almost the fullest extent to which agency can be given. A person proved to be an agent to this extent is not only himself an agent of the candidate, but also makes those agents whom he employs. The extent to which a person is an agent differs according to what he is shown to have done. An agent employed so extensively as is shown here, makes the candidate responsible not only for his own acts, but also for the acts of those whom he, the agent, did so employ, even though they are persons whom the candidate might not know or be brought in personal contact with." He then refers to the case of a sheriff answerable for the acts of his deputy as somewhat analogous.

In dealing with the evidence affecting the personal guilt of the respondent, he said: "In paying money to a person not declared to be his election agent, the respondent was in most direct terms acting contrary to 26 Vic., cap. 29, sec. 4. Besides I cannot in the slightest degree doubt that if a fund is placed in the hands of an agent by a candidate, and if it is shown that the agent expended it in corrupt practices afterwards, it is evidence tending to show that the candidate paying into those hands the money that was spent in corrupt practices was himself intending that it should be spent in corrupt practices. Then it seems to be a question to what extent it was shown, if the money was bestowed for corrupt practices,

that the candidate who gave the money was aware of it ; and in that case also the extent to which it was shown that there were corrupt practices would be very material. I think if it were shown that there had been, as in many other boroughs in former times and it may be now, extensive bribery, a large number of people bribed, corrupt clubs paid money, and so forth, it would be a very serious question whether the candidate in putting money into the hands of his agents was not personally cognizant of it."

There was no affirmative evidence given to show that the money which the respondent knew had been raised for the purposes of the election was so large that as a reasonable man he must have known that it, or some considerable portion of it, would be used for corrupt practices; and that he could not suppose that the fair and reasonable amounts to be paid for rent of rooms for canvassers, and the expenses in canvassing, such as treating persons whom they met, and probably the payment of cab hire, together with expenses of committee-men for similar purposes, with the other unavoidable legitimate expenses, could absorb the sum raised for the purpose of his election.

It was suggested that rent of a room, \$10, was an unreasonable sum. It was said a public meeting was held in this room, and that there were 200 people present at it ; there would be light and fuel required. I cannot say it struck me that \$10 was a very extortionate charge. The rooms that would be occupied by committee-men would require light and fuel ; there would probably be a number of people in the room ; they would not likely be of that class that would necessarily take much pains to keep the place very tidy ; it would probably require cleaning out next day ; and if only the charge for the use of the room is to be taken into consideration, \$5 a night would not seem to be a large sum, under the circumstances, for an ordinary sized room. No evidence was given as to the number of canvassers that would be reasonable, or as to their compensation or their expenses. I can recall the evidence of a witness in the *East Toronto case* (*ante p.*

70), tried before me. I think he was an honest man. He took a list of voters in a certain locality with a view of canvassing them ; he wanted no pay for his time ; he went at night and he met the voters frequently at taverns, and as was the custom amongst people of his class when they met to talk over matters, if they met in a tavern one would call for a drink, then the other would in his turn do so ; and so, with no intent to bribe whatever, he found in this way that he was frequently out of pocket from half a dollar to a dollar, and, if I mistake not, on some nights as much as two dollars for this kind of expenditure. He had no wish to charge for his own services, but he could not afford to be out of pocket in this way. Now if a similar practice prevailed at the election here, I can understand how a candidate might well presume that the legitimate expenses attending his election in a very close and active canvass, requiring that each elector should be frequently seen to ascertain if he continued in the same mind as formerly, would be very large. In the absence then of anything like conclusive evidence on this point against the respondent, I have not been able to make up my mind that I ought to decide against him.

The fact that the respondent might have relied on Mr. Campbell, as a lawyer and a good business man, not permitting any expenditure that was improper, may perhaps be something in his favor. But the result shows, as far as we can see, that Mr. Campbell did not take any steps whatever to prevent improper expenditure, and it might, therefore, be inferred from his conduct that he thought it best not to take a different course for fear that it might have prejudiced the respondent's chance of success in the contest.

I must confess I have been very much embarrassed in coming to a conclusion in this matter satisfactory to myself. If it was not that I felt compelled to look upon this branch of the case in the nature of a penal proceeding requiring that the petitioner should prove his allegations affirmatively by satisfactory evidence, and that he

might have given further evidence to have repelled some of the suggestions in respondent's favor, if such suggestions were not reasonable ones, I should feel bound to decide against the respondent; but looking at the whole case, I do not think I ought to do so.

If it is found from experience that the provisions contained in the present laws, now in force in the Dominion and in Ontario, do not effectually put an end to corrupt practices at elections, and that in order to do so it will be necessary to bring candidates within the highly penal provisions of declaring them, when they violate the law, incapable of being elected or holding office for several years, Election Judges will probably find themselves compelled to take the same broad view of the evidence to sustain these highly penal charges that experience compelled committees of the House of Commons to take as to the evidence necessary to set aside an election.

I think the petitioner was well warranted in continuing the inquiry as to the personal complicity of the respondent with the illegal acts done by his agents, and that he is entitled to full costs, and that the respondent is not entitled to any costs for obtaining his amended particulars.

I shall, in accordance with Mr. Bethune's request, report that the respondent, by his agents, has been guilty of bribery, but that they were not his authorized agents for that purpose, and that no corrupt practices have been proven to have been committed by or with the knowledge or consent of the respondent. From my present view of the law, I do not think that such finding can affect the status of the respondent as a candidate at any future election under the statute, but I so make my report that the petitioner may have whatever benefits from it he thinks it will entitle him to. I will certify that the witnesses made full and true answers to my satisfaction.

(9 *Commons Journal*, 1875, p. 19.)

CARDWELL.

BEFORE THE ELECTION COURT.*

TORONTO, 26th June and 16th July, 1874.

BEFORE CHIEF JUSTICE HAGARTY.

TORONTO, 19th December, 1874.

JOHN HEWITT *et al.*, *Petitioners*, v. JOHN HILLYARD
CAMERON, *Respondent*.*Preliminary objections—Property qualification of candidate—Non-compliance with demand for.*

Held, 1. As in the *North Victoria case* (*ante* p. 584), that the Dominion Elections Act of 1874 not being retrospective, the question of property qualification of candidates, at elections for members of the House of Commons held before the passing of the Dominion Election Act of 1873 can still be raised in pending cases.

2. That it is not necessary for an elector, demanding the property qualification of a candidate, to tender the necessary declaration for the candidate to make ; the intention of the statute being that the candidate must prepare his own declaration.

The petition charged that the respondent had not the proper qualification entitling him to be elected a member of the House of Commons ; that a demand of the qualification of the respondent was duly made on the day of nomination, but that the respondent did not then nor at any time afterwards deliver the same to the returning officer as required by law.

The respondent presented preliminary objections to the petition, which are sufficiently set out in the judgment.

A summons having been taken out to strike out the preliminary objections,

The Respondent in person showed cause.

Mr. Bethune for petitioner.

RICHARDS, C. J., delivered the judgment of the Court :

In disposing of the matters brought before us in relation to the *North Victoria case* (*ante* p. 584), we expressed our opinion that the question of want of property quali-

* The Judges were the same as in the *North Victoria case* (*ante* p. 584.)

fication in a candidate at the elections for members of the House of Commons, held before the passing of the Act of the last session of the Dominion Parliament, can still be raised in pending cases, and therefore the question of the property qualification of the respondent is now a matter which is to be decided under the petition.

As to the objection taken, that the petitioners allege that the respondent was not seized of lands *and* tenements instead of lands *or* tenements, we do not think the respondent was in any way misled or prejudiced thereby, and in this respect the third clause of the petition may be amended, if the petitioners or their counsel wish it, though it hardly seems necessary.

Then as to the objection to the fourth paragraph of the petition, that it is not stated that any declaration was tendered to the respondent by the elector to make at the time he made the demand, or at any other time. The statute does not seem to require any *tender* of a declaration. What it says is, that before he shall be capable of being elected, the candidate shall, if required, make the declaration; and the Consolidated Statutes of Canada, cap. 6, sec. 36, enacts that such candidate, when personally required to make the said declaration, shall give and insert at the foot of the declaration required of him a correct description of the lands or tenements on which he claims to be qualified according to law to be elected, by adding after the word Canada, "And I further declare that the lands or tenements aforesaid consist of," &c. This latter part of the declaration must undoubtedly be in writing, and must in the very nature of things be prepared by the candidate himself.

The fact that the declaration may be in the alternative, that he holds lands *or* tenements held in free and common socage, or lands or tenements held in fief or in rotture, *as the case may be*, shows that the candidate must make his own declaration. It cannot be tendered to him filled up in the proper form to be made, unless the party knows *how* the qualification he claims to possess is held,

whether in free and common soccage or in fief or in rotture.

Taking the enactments together, the reasonable view is that the candidate must prepare his own declaration; it cannot, with any certainty of its being correctly done, be tendered to and demanded from him.

We think we have substantially disposed of the other objection in the *North Victoria case*.

We are of opinion that the preliminary objections in this case must be overruled, and that the petitioners may proceed to prove the allegations in their petition if they can do so.

The petition came on to be tried before Chief Justice Hagarty, at Osgoode Hall, on the 19th December, 1874. At the close of the evidence, the petitioners' counsel admitted that the respondent was qualified at the time of the election, and that the petition might be dismissed. The respondent did not ask for costs.

The CHIEF JUSTICE so ordered.

(9 *Commons Journal*, 1875, p. 36.)

CORNWALL (2).

BEFORE CHANCELLOR SPRAGGE.

TORONTO, 28th December, 1874; 3rd February, 1875.

DARBY BERGIN, *Petitioner*, v. ALEXANDER F. MAC-
DONALD, *Respondent*.

*Preliminary objections—Two elections—Disqualification of candidate—
Effect of report to Speaker as to voters—Evidence at second trial of
bribery at first election.*

An election was held in January, 1874, under the Act of 1873, at which the petitioner and the respondent were candidates, and at which the respondent was elected. This election was avoided on the ground of corrupt practices by agents of the respondent, committed without his knowledge or consent (*ante* p. 547). A new election was held, under the Act of 1874, at which the petitioner and the respondent were again candidates, when the respondent was again elected. Thereupon another petition was presented, charging that the respondent was guilty of corrupt practices at this last election; that he was ineligible by reason of the corrupt acts of his agents at the former election; that persons reported guilty of corrupt practices at the former election trial had improperly voted at the last election; and claiming the seat for the petitioner.

Held, on preliminary objections, 1. That the two elections were one in law; and it was not material that they had been held under different Acts of Parliament.

2. That the respondent was not ineligible for re-election, as the corrupt practices of his agents at the former election had been committed without his knowledge or consent.
3. That the fact of persons having been reported by the Judge as guilty of corrupt practices at the former election, had not the effect of disqualifying them from voting at the second election. The report of the Judge is not as to them an adjudication, for voters are not, in a proper judicial sense, parties to the proceedings at an election trial.
4. But evidence of corrupt practices committed by persons in the interest of both candidates at the previous election, may be given at the trial of the second petition, with the view of striking off the votes of any such persons who may have voted at the second election.

The election held in January, 1874, having been avoided (*ante* p. 547), a new election was held under the Dominion Elections Act, 1874, at which the former petitioner and the respondent were again candidates, and the respondent was again elected.

Thereupon another petition was presented containing the usual charges of corrupt practices, and charging that the respondent was ineligible as a candidate by reason of the corrupt acts of his agents at the former election: that

persons reported guilty of corrupt practices, and persons guilty but not so reported, had voted at the second election, and that their votes should be struck off the poll. The petition claimed the seat for the unsuccessful candidate.

Preliminary objections were filed by the respondent, raising the following questions: 1. Whether the two elections were one in law. 2. Whether the respondent was disqualified. 3. Whether the votes of persons reported should be struck off the poll.

Mr. Bethune, for petitioner, moved to overrule these objections.

Mr. Harrison, Q.C., for respondent, supported the objections.

SPRAGGE, C.—The election now petitioned against was held under the Dominion Elections Act of 1874, the respondent and Dr. Bergin being the candidates. At the next preceding election for the same constituency, which was held under the Election Act of 1873, the same gentlemen were candidates, and the present respondent was returned. His return being petitioned against, the adjudication upon the trial of the election petition was, that the respondent was not duly elected or returned, and that the election was void; and that adjudication, or “determination,” as it is called in the statute, having been certified to the Speaker, a writ for a new election was ordered, and a new election had, with the result that I have stated. Preliminary objections have been taken against portions of the petition against the second election.

The 14th paragraph is objected to. It runs thus: “On the trial of the said former petition a great number of persons were reported by the said Judge in his report to the House of Commons as guilty of corrupt practices on behalf of the respondent at the said first election, and a great many persons voted at the said last election who were guilty of corrupt practices on behalf of the respondent.”

ent at the said former election, who were not reported, and such persons so reported as aforesaid voted at the said election, and a number of votes equal to the number of persons so reported as aforesaid, and so guilty of corrupt practices as aforesaid at the first election, should be struck off the number of votes polled for the said respondent."

This raises two questions—one as to persons who were reported at the trial of the former petition to have been guilty of corrupt practices at the first election, and who voted for the respondent; the other as to persons who voted in the same way, and who were also guilty of corrupt practices, but who were not reported.

The objection is as to the whole paragraph, and raises first the general question, whether corrupt practices by voters at the first election affect their right to vote at the second; and supposing that proposition answered in the affirmative, the second question is as to the class first named—those reported—whether the report is as to them an adjudication that they were at the first election guilty of corrupt practices.

The contention upon the general question on behalf of the petitioner is that the first election having been determined to be null and void, it was in law no election; and that the first and second elections, though two elections in fact, are one election only in law.

The point was fully discussed in the judgment given by Sir Joseph Napier in the *Dungarvan case* (2 P. R. & D. 300), and that judgment is well summarized in Rogers' Treatise on the Law of Elections, 10th Ed., 227, thus: "Where an election has been set aside by an election committee as 'null and void,' the committee, upon the trial of the subsequent election, are at liberty to inquire into any corrupt acts whatever which have been committed at the previous election, after the vacancy, on the ground that although there have been two elections in fact, and two writs have actually issued, yet there never has been a valid return according to the proper exigency

of the first writ; in short, that the proceedings subsequent to the issuing of the first writ, until a legal return has been made to it according to its exigency, constitute in point of law one election, into which the committee are then inquiring. In the words of the learned chairman: 'The party who offends against the prohibition of this Act is disabled to serve in Parliament upon such election, which in a restricted sense would apply only to the election in relation to which the offence shall have been committed. But if this election be subsequently declared null and void, and a new election take place under a new writ in order to supply the vacancy by the due election of a qualified candidate, then on a petition upon this new election against the return of a party who may have committed bribery, &c., at the previous election, which has been set aside as null and void, it may be open to show those previous acts of bribery, &c., as constituting a disqualification of the offending candidate, and disentitling him to be returned upon such new election, because the vacancy still remains until it is supplied by the return of a qualified candidate upon a valid and lawful election, which ultimately takes place, not under but according to the proper exigency of the first writ. In this way the language of the statute is adapted to the case of one entire process of election, ending in a single valid and recognized return of a duly qualified candidate, so as to supply the original vacancy.' *Acc. 2nd Horsham* (1 P. R. & D. 240); *2nd Cheltenham* (*ibid.* 224); *2nd Lisburn* (W. & Br., 233); and cases quoted on pp. 226, 227. All the above mentioned corrupt acts, therefore, if taking place at a former election, operate as a disqualification at a subsequent one, provided the first has been set aside by a competent authority as null and void."

The same view has been taken in other cases of the legal effect of an election being determined by a competent tribunal to be void; and so in the late case of *Drinkwater v. Deakin* (L. R. 9 C. P. 626), Lord Coleridge speaks of an election after an election determined to be void,

which he says is "regarded as an adjournment only, or continuance of the election so avoided." In another passage (p. 637), "the second election under these circumstances is but a continuation of the first, the exigency of the writ not being satisfied till there is a good return."

In the earlier case, though still a recent case, of *Stevens v. Tillett* (L. R. 6 C. P. 147), Mr. Justice Willes appears to have entertained considerable doubt upon the point. He says (p. 171): "But I do not feel sufficiently confident, in respect of concluding that the first and second proceedings are to be treated as one proceeding, to lay that down in point of law;" and after referring to the *Dungarvan case*, he explains how in subsequent cases a person disqualified for corrupt practices cannot be a candidate for the same place at the next election for the same place (or, indeed, at any subsequent election during the same Parliament), without resorting to the doctrine of an avoided election followed by another election being in law only one election. He explains it by the provisions of the Corrupt Practices Prevention Act, 1854, s. 36, "That if any candidate at any election for any county, &c., shall be declared by any election committee guilty, by himself or his agents, of bribery, treating, or undue influence at such election, such candidate shall be incapable of being elected or sitting in Parliament for such county," &c., during the Parliament then in existence.

The decision in the *Dungarvan case* proceeded upon the like disqualification created by a previous Act, 5 & 6 Vic., c. 102, where the corrupt practice was "treating." It was the opinion of Mr. Justice Willes that under section 36 of the Act of 1854, a petition might be presented at any time during a Parliament at which corrupt practices had been used. He places his decision in the *Westbury case* (1 O'M. & H. 47, 53) upon that ground; and in *Stevens v. Tillett* he says (p. 177): "I apprehend that the 36th section is the pivot now of all these proceedings." It seems to me clear that decisions subsequent to 1854 may properly be referred to that section.

It seems clear, also, that, without that section, corrupt practices previous to an effectual election would not work a disqualification at an election subsequent to it. The same learned judge observes: "As to matters which occurred at the former election, though bribery at the particular election goes to the disqualification of a member, yet I can find no authority at common law that bribery at a former entirely disconnected election would go to the disqualification of a member, and I think it seems to be agreed at the Bar that there was no such authority." If it would not go to the disqualification of a member, it is hardly necessary to say that it would not disqualify a voter. We have no provision in our statutes equivalent to section 36 in the Imperial Act of 1854, or the previous Act of 5 & 6 Vic. (which relate to corrupt treating), and therefore the disqualification of voters contended for by the fourteenth objection must rest entirely upon the doctrine propounded in the *Dungarvan case*.

Mr. Harrison, for the respondent in this case, drew a distinction between the case of members and voters—the *Dungarvan case* and other cases cited by Mr. Bethune being cases of members; but the principle of the doctrine obviously applies to the case of voters as much as to that of candidates. If it is the same election as to the latter, it cannot be otherwise as to the former.

Mr. Rogers (p. 227) treats it as a moot point with committees, before the passing of the C. P. P. Act, how far bribery or other corrupt practices under Acts which he enumerates, if taking place at a former election, disqualified a person from being elected or sitting on a subsequent one. I apprehend the learned author did not mean to say that it was a moot point whether a member could be unseated for corrupt practices at a previous one. That was the case in the *Camelford Election case* (Corb. & Dan. 239), decided as long ago as 1819. In that case a distinction was taken in argument between corrupt practices by a candidate and petitioner, and corrupt practices by the candidate returned at a previous election; and it was

said by counsel that in all the cases cited the party who was unseated, or who was declared to be ineligible, had been himself returned in the first instance, and that the return had been subsequently set aside by a judgment of a committee finding that he had been guilty of bribery or treating at such first election. I refer to this argument only to show that it was not denied by counsel for the respondent (and they were counsel of eminence) that corrupt practices at a previous election could be shown in order to unseat, at any rate, the candidate returned, involving the proposition that evidence of corrupt practices at a previous election was admissible, and, if admissible, the Judge who may try the present election petition must receive such evidence.

The weight of authority appears to me to be in favor of receiving such evidence, and I cannot therefore allow the objection to the 14th paragraph of the petition. I must, however, dissent from the proposition implied in it, that the votes given at the previous election of persons reported to have been guilty of corrupt practices at that election be disallowed. I put it in that shape because that would be the effect of striking off an equal number of votes given for the respondent at the previous election. It appears to me to be very clear that no such effect as is contended for is given by the statute, or could in reason be given to the report of the Judge.

In the very elaborate judgment of Sir William Bovill, in *Stevens v. Tillett*, the distinction is clearly pointed out between the judicial determination of the Judge, which he certifies to the Speaker, and the report which he is required to make at the same time. After giving a history of the legislation which preceded the Parliamentary Election Act of 1868, from which the Canadian Acts constituting the Judges the tribunals for the trial of controverted elections are taken, he comments upon those clauses of the Act which relate to the determination to be come to by the Judge on the trial, and his certificate of such determination, and to the report to be made under

the Act. I cannot do better than quote his language : " Now this Act of Parliament, which is really the foundation of our jurisdiction, and which declares and must determine what is the effect of reports of the election Judges, makes a very material distinction between what is final and what is not final. For instance, subsection 13 of section 11 declares that the determination of the Election Judge shall be final to all intents and purposes. But that is the 'determination' mentioned in that section, viz., as to who was duly returned or elected, or whether the election was void, that is, by the express terms of the clause, which says that 'at the conclusion of the trial the Judge who tried the petition shall determine whether the member whose return or election is complained of, or any and what other person, was duly returned or elected, or whether the election was void, and shall forthwith certify in writing such determination to the Speaker, and upon such certificate being given, such determination shall be final to all intents and purposes.' The other case in which a decision is to be final is under subsection 16 of the same section, which enacts that a special case may be stated under certain circumstances, which shall be heard before the Court, and that 'the decision of the Court shall be final,' and 'the Court shall certify to the Speaker its determination in reference to such special case.' In those two cases, both of which relate to the determination of the question as to who is to be the sitting member, or whether the election was void, the Act expressly declares that the determination shall be final. That is entirely in accordance with the Grenville Act, and with the 11 & 12 Vic., c. 98. The provisions are almost in words the same. Then, following the provisions of the previous Acts (it having been optional, however, under those Acts with the Election Committee to report on any special matter as they might think fit), subsection 14 of section 11 of this Act says, 'the Judge shall, in addition to such certificate and at the same time, report in writing to the Speaker.' It nowhere says that such report

is to be final. It does not say that the Judge shall determine any particular matter, or that he shall not determine any particular matter, in terms; but it says he shall report first 'whether any corrupt practice has or has not been proved to have been committed by or with the knowledge and consent of any candidate at such election, and the nature of such corrupt practice.' Then, secondly, 'the names of all persons (if any) who have been proved at the trial to have been guilty of any corrupt practice.' Thirdly, 'whether corrupt practices have, or whether there is reason to believe that corrupt practices have extensively prevailed at the election to which the petition relates.' And at the same time he is authorized to make a special report to the Speaker as to 'any matter arising in the course of the trial, an account of which, in his judgment, ought to be submitted to the House of Commons.' . . . My object in referring to the previous legislation was to show how closely the provisions of the former Acts have been followed in the recent Act of Parliament; and just as a distinction is made in those Acts between the 'determination' of the petition and a 'report' upon other matters, so this Act of Parliament, while it says that the 'determination' of the petition is to be final, contains no such words as to the 'report.' Where effect is intended to be given to the report it is expressly enacted what that effect shall be, but there is nothing in this Act which I have been able to discover that makes the mere 'report' of the Election Judge equivalent to his 'determination.' There is nothing which says that the report is to be final for any purpose whatever except in the particular cases that are expressly mentioned; and the present is not one of them. If Parliament had intended, not only that the determination of the question as to the seat was to be final, but that the report was to be final in other respects, it would have so enacted. But it could hardly have been intended that such a report should be final, looking at the various matters which may be included in it, as stated in the different paragraphs of section 11. If the report

was not to be final under the old Acts, it seems to me that we should be going a long way, and straining the construction of this Act, to hold that it was to be final in this case, or that the parties were concluded by it." The same distinction was taken between the effect of the "determination" by the Judge and his "report," by Mr. Justice Willes and Mr. Justice Keating, who also gave judgment in the same matter.

The question in *Stevens v. Tillett* was as to the effect to be given to a "report" of a Judge in relation to the conduct of a candidate at a previous election. In the case before me the report is in relation to corrupt practices by voters, and the case is therefore *a fortiori*; for voters are not in a proper judicial sense parties to the proceedings at an election trial, and to give the effect contended for to the report concerning them would be making an adjudication affecting their franchise behind their backs. I apprehend that in order to affect them the report would have to be laid before the Attorney-General with a view to the prosecution of the persons named in the report, as was suggested by Sir Wm. Bovill (p. 158), in relation to individuals reported by an Election Committee to have been guilty of corrupt practices.

My opinion, then, upon the 14th objection is that it is not tenable in its present shape; that so much of it as relates to voters reported to have been guilty at the first election of corrupt practices, and states as a consequence that an equivalent number should be struck off the number of votes polled for the respondent at the second election, must be overruled.

But further, my opinion is that upon the trial of the petition now presented against the second election, evidence may be given of corrupt practices at the first election, and I apprehend that it will be open on the other hand to the respondent to show corrupt practices on the part of voters for the petitioner. It will be in substance and effect a scrutiny so far as the petitioner's case under the 14th paragraph of his petition is concerned.

The second objection taken by the respondent is to the 16th paragraph of the petition, and to so much of the 17th and 18th paragraphs as charge that the respondent was ineligible to be elected by reason of his former election having been avoided ; the petition not charging or showing any other facts or circumstances which would cause the respondent to be ineligible or disqualify him to be a candidate at the said election.

The point argued upon this objection is the same as was raised at the *London case* (*ante* p. 560) before the Chief Justice of the Common Pleas, and reserved by him for the judgment of that Court (24 C. P., 434) ; and the same as was raised also at the *Kingston case* (*ante* p. 625) before the Chief Justice of Ontario, and overruled by him.

At the trial of the first petition I determined that the election was void by reason of the corrupt acts of agents ; that was my adjudication. I at the same time, in pursuance of the Act, reported to the Speaker that no act of corrupt practice had been proved before me to have been committed by or with the knowledge and consent of the respondent. His ineligibility therefore must rest upon my determination that the first election was void by reason of the corrupt acts of agents.

A point occurred to me at the argument of these objections—and I stated it at the time, but it was not urged by counsel—that if the two elections that have taken place in fact constitute one election in law, the respondent has it determined against him that his election was void by reason of the corrupt acts of agents. He goes to the poll a second time, and on the second occasion with that adjudication against him. In the case of voters there has been no adjudication ; but if the fact of corrupt practices at the first election be established in evidence, their votes (or an equal number) will be struck off on the short ground that the corrupt practice at the first election disqualified them from voting at the second. If as to these voters there had been an adjudication, an equal number of votes would be struck off now. It seems to

me, I confess, to be a logical sequence that the candidate's seat is forfeited by the corrupt practices of his agents. Or it may be put in this way: Suppose no adjudication against the candidate, then candidate and voters would stand upon the same footing in relation to what took place at the first election; in fact, give to corrupt practices at that election the same effect as to the respondent, he being the candidate at the first as well as the second election, as we give in regard to voters, would not his seat be forfeited upon proof of corrupt practices at that first election? . But there is, as to him, an adjudication, and so the fact of those corrupt practices requires no further proof.

Logically, I confess, I see no escape from this conclusion; but the answer may be this: The doctrine that a void election is no election, and that such election followed by an effectual election is in law but one election, prevailed before the passing of the C. P. P. Act, which was passed in 1854. That Act rendered a candidate who should be found by an Election Committee guilty of corrupt practices, by himself or his agents, incapable of sitting for the same county, city, or borough during the Parliament then in existence. That Act, it is true, consolidated as well as amended the law relating to elections, but the provision that I have cited was not, I believe, contained in any previous Act, except that relating to corrupt treating, referred to in the *Dungarvan case*; and while there has been legislation on the subject in the Parliament of the late Province of Canada, and of the Dominion, and of the Legislature of Ontario, since the passing of that Act, no similar provision has found a place in any Act on the subject.

The carrying out of the doctrine to its full extent would have the same effect, for if the first election, being void, is no election, and the adjudication against the candidate would operate to unseat him when again returned, it would have the same effect at the third or any subsequent election, at any rate during the same Parliament,

and so the candidate would be rendered incapable of being elected by the operation of this doctrine; while the Legislature has abstained, while adopting several provisions of the Imperial Act of 1854, from adopting the one to which I have referred; and in the Dominion Act of 1874, under which this second election was held, the "punishment for corrupt practices" is expressly defined, and it is only where it is proved that there has been any corrupt practice with the actual knowledge and consent of the candidate, or a conviction for the misdemeanor of bribery or undue influence, that any penalty is incurred beyond the avoiding of the election.

The enactment obviates difficulties in the future, but the question raised is whether the respondent was not ineligible by reason of what had occurred at the previous election, which took place before that Act was passed. Looking at the legislation to which I have referred since the passing of the Imperial Act of 1854, and the other considerations to which I have adverted, I think the proper conclusion is that the respondent was not ineligible.

I find that I have omitted to notice the contention of Mr. Harrison, that the doctrine to which I have several times referred cannot apply to this case because the first and second elections in fact were under different Acts of Parliament—the Act of 1874 repealing that of 1873, and substituting other provisions in its stead.

Mr. Bethune directed my attention to the Interpretation Act as an answer; and it appears to me that subsection 35, and the subsequent subsection, of section 7 are an answer to the objection. Besides, the Act of 1873 is not wholly repealed. Elections held, rights acquired, and liabilities incurred before the coming into force of the Act of 1874, are expressly excepted. I cannot agree with Mr. Harrison's contention upon this point. The point that the respondent was ineligible for re-election upon the 18th section of the Act of 1873, cap. 27, was but little pressed by Mr. Bethune. I thought certainly that it would be a strained construction to give to that section

to hold a candidate ineligible in the absence of personal wrong, and only by reason of the acts of agents. The learned Chief Justice of Ontario has held in the *Kingston case* that in such a case no disqualification was created, and the Court of Common Pleas has since, in the *London case*, expressed the same opinion.

I think this is not a case for costs to either party.

SOUTH NORFOLK.

BEFORE CHIEF JUSTICE DRAPER.

SIMCOE, 24th to 26th June, and 5th July, 1875.

JOHN DECOW, *Petitioner*, v. WILLIAM WALLACE,
Respondent.

*Amendment of particulars—Delay—Agency—Bets—Bribery—Treating—
Candidate acting as agent.*

On an application by the petitioner to amend the particulars by adding charges of bribery against the respondent personally, and his agents, his attorney made affidavit that different persons had been employed to collect information; that the new particulars only came to his knowledge three days before the application; and that he believed they were material to the issues joined.

Held, that as it was not shown that the petitioner or the persons employed could not have given the attorney the information long prior to the application, and as it was not sworn that the charges were believed to be true, nor were they otherwise confirmed, and as the amendment might have been moved for earlier, the application should be refused.

The respondent in his evidence stated that he objected to committees; that he knew certain persons were his supporters, and believed they did their best for him, but he did not personally know that they acted for him. Other evidence showed that these persons took part in the election on behalf of the respondent; some spoke for him at one of his meetings; and one of them stated that he and some of the others canvassed for the respondent, and that he gave the respondent to understand he was taking part in the election for him.

Held, that as it did not appear that any one of these persons was authorized by the respondent to represent him, and as they did not claim to have any such authority from him, but supported the respondent as the candidate of their party, the said persons were not agents of the respondent for the purposes of the election.

Semble, 1. That if a candidate who had appointed no agents was aware that some of his supporters were systematically working for him, and by any act, or forbearance, could be fairly deemed to recognize and adopt their proceedings, he would make them his agents.

2. That if a candidate in good faith undertakes the duties which his agent might undertake, the acts of a few zealous political friends in canvassing for him, introducing him to electors, attending public meetings and advocating his election, or bringing voters to the poll, would not make such candidate responsible for prohibited acts contrary to his publicly declared will and wishes, and without his knowledge and consent.

Money was given to certain voters to make bets with others on the result of the election, but as there was no evidence of a previous understanding as to the votes, such bets were not bribery. The practice of making bets on an election condemned as like a device to commit bribery.

Treating at an election, in order to be criminal, must be done corruptly, and for the purpose of corruptly influencing the voter.

Remarks on the evidence of agency.

At the general election held on the 22nd and 29th January, 1874, John Stuart was elected for this constituency, but on a petition alleging corrupt practices by his agents, the election was avoided (9 *Commons Journal*, 1875, p. 13). A new election was held on the 16th December, 1874, at which the respondent was elected. A petition was then presented against the return of the respondent, containing the usual charges of corrupt practices.

Mr. C. J. Fuller and Mr. H. S. Hill for petitioner.

Mr. Tisdale, Q.C., and Mr. Robb, for respondent.

At the close of the second day's evidence (25th June), the petitioner's counsel applied for an order to file additional particulars, upon an affidavit of the attorney on the record, sworn that day, stating that he had used due diligence in preparing the particulars under the order of Court, dated 3rd April, 1875; that for the purpose of preparing such particulars different parties had been employed to collect information; that the new particulars (which were annexed to the affidavit) only came to the attorney's knowledge since Tuesday, the 22nd June inst., and that the cases mentioned were, he believed, material to the issues joined. The cases were: charges of bribery against the respondent personally and his agents. On the following morning the application was disposed of as follows:

DRAPER, C.J.A.—I refuse the application, considering the delay that has taken place. It no doubt is to be assumed that the attorney has just been informed of these matters; but it is consistent with the affidavit that his informants were parties who could have given him the information long ago, and that from various causes may have withheld it from the attorney's knowledge. The particulars may, for all that is shown, have been well known to those who gave the attorney the information; the petitioner may have known them for weeks or months. Then, for all that is sworn, the statements may be the merest fabrications. The attorney does not swear that he believes them, nor does any other person in any way confirm them. It is not sworn that there is a reasonable ground for believing that they can be proved. The information is sworn to have been received since Tuesday, and no application until Friday evening, on which day the affidavit was sworn. Apparently it might have been made earlier. Delay, expense, and inconvenience ought not to be caused at so late a period, unless upon a strong and clear statement of the existence in fact of sufficient grounds.

During the trial, evidence was given of several alleged acts of bribery and treating, which are sufficiently set out in the judgment. The following is taken from the learned Judge's notes of the evidence as to the agency of the parties named:

Dr. N. O. Walker: I took part in the last election. I gave respondent to understand I was taking part for him. I know Mr. Ozias Ansley; he was also working for respondent. I know that Edward Hammond was canvassing for respondent. Never met a committee on this election, and there was no organized committee for respondent at this election.

Cross-examined: I spoke for respondent at two or three meetings, and if I met with electors I spoke to them. Ansley and the others I have named acted as I did.

James W. Stewart : I know Hammond, Ansley, David Sharp, and Dr. Walker. They took part in the election on behalf of the respondent. They were at respondent's meeting at Port Dover the night previous to the election.

Simon Belch : I was at Port Dover at a public meeting. Tisdale and Dr. Walker both spoke in favor of Wallace.

Edward Hammond : I was at respondent's meeting at Port Dover. I think I asked three persons to vote for him.

Robert R. Reid : I had a list of voters. I attended two meetings where the respondent spoke. There was no committee formed. I was a member of a committee of Wallace's friends at a previous election. We met after the meeting to choose delegates, and looked over the list to see if any reformers' votes could be objected to. We looked over the voters' lists for both elections. I don't know that the respondent was aware I was moving for him. I made no reports to any one of my proceedings.

William Wallace (respondent) : I know Hammond and Ansley. I do not personally know they acted for me. I object to committees, but I trusted the whole party. I know that Ozias Ansley, Dr. N. O. Walker, and Edward Hammond and Tisdale were my supporters. I was pleased to have them all vote for me. I believe they all did their best for me.

Cross-examined : I held about forty meetings. Wherever the subject came up I invariably charged my supporters and friends to be most careful not to infringe the law.

DRAPER, C. J. A.—The first question which arises is, whether certain persons hereinafter named were proved to be the respondent's agents, so as to render him liable for their acts, as if he had personally consented to or taken part therein. The term "agent" carries with it the idea of authority given by the candidate to some person to act in his name and in his behalf in affairs con-

nected with the election; and it is an established principle that where a person has employed an agent for the purpose of procuring his election, such person is responsible for the act of the agent in any corrupt practice, though he not only did not intend or authorize it, but even had in perfect good faith done his best to prevent it; and it has been held that every instance in which it is shown that, either with the knowledge of the candidate, or to the knowledge of an agent employed by the candidate, a person acts in furthering the election for him by trying to get votes for him, is evidence tending to show that the person so acting was authorized to act as his agent. The weight and cogency of such evidence will depend upon the circumstances of each case; but it is evidence, and as such must receive proper attention. Their canvassing, that is, making efforts to obtain votes and interest and support, is evidence of agency, but depends for force and weight upon its extent and urgency. If done at the suggestion of the candidate, it would be direct proof of agency; if merely voluntary, it ought not to be so regarded. Going round the county, and attending meeting after meeting, and speaking at such meetings, is strong evidence. Attending one meeting and speaking there, would be an isolated act, and, by itself, of little weight. These and similar acts, being repeated, are regarded as sustaining the inference that they are done with the knowledge and at the request of the candidate who thus employed the party as his agent. On the other hand, the candidate may deprecate such individual agency from the fear of indiscretion, or even worse, on the part of supporters, who regard the immediate result without sufficient scruple as to the means, and without reflecting upon future consequences.

In the present case the respondent was called as a witness by the petitioner. He stated his objection to committees, and it did not appear there was one formed on his part and with his knowledge; he said he held about forty meetings, and invariably charged his friends

to be careful not to infringe the law ; he put in papers containing addresses, to which his name was attached, with a view of showing that he depended on a general appeal to the constituency rather than any application to individuals ; he stated in evidence that he trusted to the whole party for support, and referring to those who were signalized on the trial as having acted in a manner which justified the petitioner in treating them as agents, he said he knew they were all his supporters, was pleased to have them vote for him, and believed they all did their best for him ; but nothing stronger was elicited from him to identify him with their acts in promoting his election. He was not even asked whether he was from time to time informed what they were doing or proposed to do.

I do not doubt that if a candidate, who has appointed no agents, is made aware that some of his supporters are systematically working for him, and by any act (or perhaps even by forbearance to interpose) can be fairly deemed to recognize and adopt their proceedings in order to further his election, he makes them his agents, and must take the consequences. A contrary rule would encourage fraud and corruption, and facilitate evasions of the law.

Nearly all the cases set out in the particulars, to sustain which evidence was given, are charged to have occurred in the south-eastern part of this electoral division ; the places named are Port Dover, the townships of Charlotteville and Woodhouse, and a place called Dog's Nest, at or near which were two taverns, one kept by George Mitchell, the other by one McQuade. The persons who were represented, on the part of the petitioner, to have acted as agents for the respondent were Edward Hammond, David Sharp, Ozias Ansley, and Dr. N. O. Walker. They are all generally charged with having canvassed for the respondent, with having taken part in the election on his behalf, and having worked actively for his election. Many other parties were named in the particulars as parties to alleged corrupt practices, but with regard to these

latter persons, there was no evidence beyond their apparent earnestness to secure the respondent's election, on which to fasten the character of agents upon them, so as to make him responsible for their acts.

As to the other four persons named, it is to be remarked that it does not appear that either of them were authorized by the respondent to represent him for any purpose; nor that they ever professed to do, as far as I have gathered from the evidence. They were all members of one political party, had previously supported the respondent, and did so at the present election as the candidate of that party, without reference to personal feelings. None of their acts have been traced to the solicitation or direction of the respondent, who does not appear to have interfered in any way with their proceedings in regard to the election. Each seems to have canvassed independently of the other, acting on behalf of the political party to which they belonged, but independently of the respondent and of each other.

There were some matters of an apparently dubious character which I deem it fitting to notice. One was between a witness named Myers and Mr. Ansley, in which I find the following facts: On the polling day, and soon after one Frederick Myers had voted, Ansley handed him a \$5 bill to go and bet on Wallace. There was not the slightest evidence of any previous understanding between them; but Myers took the money, and betted it with Joseph Bell, that Wallace would be elected. The two sums were put into the hands of a third party to abide the event. Bell raised objections to its being paid over, and it was held until May last, when Myers got it and paid it all to Ansley. When giving the \$5 to Myers, Ansley said if Myers lost the bet it would cost him nothing, and if Myers wanted more money to bet to come to him and get it. One Martin, who said he was present, represented the matter rather differently; but on the weight of evidence I find the facts as above stated. Some considerable time afterwards Myers got the money from

the stakeholder, and paid the \$10 to Ansley, to whom, as I concluded, it rightly belonged. Myers only got the money back in May last, before the Queen's birthday.

Martin, above named, also stated that he received \$5 from Hammond to bet that Wallace would be elected; that if he won he was only to return the \$5 to Hammond; and that if he betted this money and desired to bet more, to come back and he (Hammond) would give it to him. There was, however, no particulars setting out this as a charge, and objection being taken, the matter was dropped. Moreover, his statements were contradicted.

There was also a somewhat similar matter advanced, in which it was sworn by Joseph Bell that on the polling day he heard Ansley say to one Jacob Krell: "Here's \$5—putting a bill into Krell's hand—go in and vote for Wallace, and bet that Wallace will be elected, and if he is not elected you will not lose anything, and if he is elected you can keep the \$5 you win; all I will ask is the \$5 I give you;" and that Krell took the money, and gave it back to Ansley before he went in to vote. Krell denied that Ansley gave him any money to bet with; he was a German, and could, as he said, neither read nor write. Ansley denied upon oath that he ever put \$5 into Krell's hands, or even told him to bet on Wallace. This denial from both Krell and Ansley put an end to this case, which rested on Bell's assertion of what he had heard and what Krell told him. There is, however, further evidence that Ansley offered money to Krell to bet with, but the witness could not, or would not, say that Krell took it; and of another witness who also swears that Ansley offered money to Krell, saying, "Take it and bet;" but did not say that Krell took it.

I cannot help saying that this practice of making such bets, when on a contingency by which the so-called borrower may win and cannot lose, looks to me very like a device to commit bribery; and if the transaction with Myers had been proved to be of that character, and to have been entered into and agreed upon before he voted,

as at present advised, I should have held it to be bribery. The positive statement that Myers had voted, and that the arrangement for betting was subsequent thereto, and that the whole money paid over by the stakeholder was given to Ansley, is, however, sufficient to repel the charge, though it may leave doubt and suspicion behind.

There is also a matter with which Mr. Hammond is connected, which is sufficiently met and explained by the evidence; but it seems to me unfortunate that it should have happened just at the time of the election. According to the statements of the witnesses, Mr. Hammond had become indebted in the sum of \$18 to Frederick Myers for teaming with one horse and a single waggon, drawing sand, tan bark, &c. The account had begun some six months before the election. Myers' explanation as to how he kept the account and rendered a memorandum of it, were somewhat confused, and he failed in an attempt made in Court to explain it. But he said that shortly before the election he met Hammond, who told him he ought to vote for Wallace. Myers had at the previous election voted the other way. Hammond had asked him the amount a week before, and on the day before the polling gave him \$5, and told him he could bet it on the election, which he did, and won on the next day. Hammond paid him the remaining \$13, and he never directly or indirectly returned any part to Hammond. He had recently talked with Ansley and with Hammond about his transactions with them. He told Hammond that people were writing about his getting money from Hammond, who laughed and said, "It was your own money I paid you." Hammond in his evidence confirmed Myers' statement, and said he was satisfied with the memorandum which Myers gave him.

As another proof that these four persons were to be deemed agents of the respondent, acts of treating during the election, and especially on the polling day, were charged upon them. I cannot say that there was no foundation for these charges; it would seem from the

evidence to be an inveterate habit, when people in country places meet on public occasions, that they should resort to the taverns to drink together. One after another invites his friends, or, as is commonly expressed, "calls up the crowd" to the bar to drink at his expense. This has been a general practice at election times, and, as was proved in this case, is at times followed without reference to political differences. But to understand the bearing of such a custom on this election, we must refer to the Dominion Election Act, 1874, 37 Vic., cap. 9, sec. 94, which enacts that every candidate who corruptly, by himself, or by or with any other person on his behalf (which includes agents), either before or during the election, gives or is accessory to giving meat, drink, refreshment, or provision, to any person, for the purpose of corruptly influencing such person or any other person to give or refrain from giving his vote, shall be deemed guilty of the offence of treating, which by sec. 98 is declared to be a corrupt practice. The respondent was not more proved guilty of this than of other personal charges; and, if found guilty, it must be through the acts of his agents.' The consequence of committing this offence by a candidate or his agent, whether with or without the actual knowledge or consent of the candidate, is that his election, if he be elected, shall be void. It is not, however, the simple act of treating, but the intention with which that act is committed, which gives it the criminal character, and which subjects the candidate to the loss of the seat. It must be done corruptly, and for the purpose of corruptly influencing the voter.

I have carefully considered the evidence in connection with this language. If the Legislature meant that the act of treating a voter before and during an election constituted the offence, they need not have added the corrupt intent to obtain a corrupt influence. More than the act of treating has to be proved; and, therefore, to stop at a tavern on the way to the poll on a winter's day or after a long drive, and to get meat and drink at the

expense of the candidate, is but a part of the case; and to it must be added something to establish that the thing was done corruptly. And this is not, as appears to me, to be inferred without some evidence of solicitation as to the voting connected with the act of treating; and this has been generally overlooked.

But if the treating took place in the candidate's absence, as was assumed in the instances proved, the fact of agency must be established. I do not pretend to lay down any universal test or rule of deciding, but I cannot think that a candidate must of necessity be placed in danger of ultimate defeat by the indiscretions of a few of his supporters who will risk the use of doubtful, if not illegal, means to obtain a present success. I do not see that he may not legally be his own agent for all the purposes of the election, except those covered by the 121st section of the Act already referred to. The 78th section of that Act recognizes the right of the candidate in that respect, and, with the exception noted, authorizes him to undertake the duties which an agent appointed by him might have undertaken. If he does so in good faith, I do not think that the acts and exertions of a few zealous political friends in canvassing for him, or even with him, to introduce him to electors to whom he was a stranger, or attending party meetings and advocating his election, or bringing up voters to the poll, can make him responsible for prohibited acts contrary to his publicly declared will and wishes, and without his knowledge as well as without his consent.

I think that the respondent has proved, both by his acts and his public declarations, made from the time he first announced his candidature, that he meant to be his own agent, and that he had pursued that course, and that he is not connected with any of the matters complained of as done by the persons alleged to be his agents; and that none of the charges advanced against him as the acts of his authorized agents are so substan-

tiated as to warrant me in holding that his election and return are void.

I therefore dismiss the petition with costs.

(10 *Commons Journal*, 1876, p. 29.)

NORTH VICTORIA (2).

BEFORE MR. JUSTICE WILSON.

LINDSAY, 13th to 16th and 24th April, and 4th May, 1875.

HECTOR CAMERON, *Petitioner*, v. JAMES MACLENNAN,
Respondent.

Marking ballots—Votes tendered but rejected—Parol voting—Agency—Dinners to voters on polling day—Corrupt practices.

The following ballots were held valid :

- (1) Ballots with a cross to the right just after the candidate's name, but in the same column and not in the column on the right hand side of the name. (2) Ballots with an ill-formed cross, or with small lines at the ends of the cross, or with a line across the centre or one of the limbs of the cross, or with a curved line like the blades of an anchor.

The following ballots were held invalid :

- (1) Ballots with a single stroke. (2) Ballots with the candidate's name written thereon in addition to the cross. (3) Ballots with marks in addition to the cross, by which the voter might be identified, although not put there by the voter in order that he might be identified. (4) Ballots marked with a number of lines. (5) Ballots with a cross for each candidate.

Quere, whether ballots with a cross to the left of the candidate's name should be rejected, as the deputy returning officer is not bound to reject such ballots under sec. 55 of the Dominion Elections Act, 1874.

The names of certain persons who were qualified to vote at the election appeared on the last revised assessment roll of the municipality, but were omitted from the voters' list furnished to the deputy returning officer and used at the election. They tendered their votes at the poll, but their votes were not received ; and a majority of them stated to the deputy returning officer that they desired to vote for the petitioner. The petitioner had a majority without these votes.

Held, by the Court of Queen's Bench (affirming *Wilson, J.*), no ground for setting aside the election.

Semble, per Wilson, J., 1. That, though the only mode of voting is by ballot, if it became necessary to decide the election by determining the right to add these votes, it should be determined in that manner most consistent with the old law, and which would have saved the disfranchisement of electors, and the necessity of a new election.

2. If the right of voting can only be preserved by divulging from necessity for whom the elector intended to vote, the necessity justifies the declaration the elector is forced to make, as there is nothing in the Act which prevents the elector from saying for whom he intends to vote.

3. An elector duly qualified, who has been refused a ballot paper by the deputy returning officer, cannot be deprived of his vote; otherwise it would follow that because the deputy returning officer had wrongfully refused to give such elector a ballot paper, his vote would not be good in fact or in law.

One P., a tavern keeper, took the petitioner's side at the election and at a meeting called by the petitioner, at which he was appointed chairman. Notices of this meeting were sent by the petitioner to P. to distribute, some of which P. put up at his house and some he sent to other places. On polling day P. desired to give a free dinner to some of the petitioner's voters, and asked the petitioner if he might do so. The petitioner did not approve of it in case it should interfere with his election, and warned P. that although he was not his (petitioner's) agent, he would rather he should not do it. P., notwithstanding this, paid for free dinners to 40 of the petitioner's voters.

Held, by the Court of Queen's Bench (affirming *Wilson, J.*), 1. That P. was not an agent of the petitioner.

2. That the giving of free dinners to a number of electors who had come a long distance in severe winter weather, in the absence of evidence that it was done for the purpose of influencing the election either by voting or not voting, or that such electors voted, was not a corrupt act.

The petitioner was held entitled to the general costs of the petition, except as to the cases of the voters whose names were not on the voters' lists, and as to the scrutiny of ballots.

The former election having been avoided (*ante* p. 612), a new election was held, at which the same parties were candidates. The respondent was declared elected by a majority of three votes. The unsuccessful candidate thereupon filed a petition containing the usual charges of corrupt practices, and claiming the seat on a scrutiny of votes.

The Petitioner in person and Mr. F. D. Moore for petitioner.

The Respondent in person.

At the conclusion of the evidence the petitioner abandoned the charges of corrupt practices, but claimed the seat on a scrutiny of the ballots.

The respondent contended that he was entitled to hold the seat upon a scrutiny, and that the petitioner by his agents, had been guilty of corrupt practices.

The general facts of the case are set out in, the arguments of counsel, the judgment of Mr. Justice Wilson, and in the report of the case in appeal to the Court of Queen's Bench (37 Q. B. 234).

Mr. Maclellan, Q. C. (the respondent): The majority in favor of the respondent is said to be only three, and supposing that the result of the scrutiny is against him by a few votes, it is clear the election was wholly void, because as many as fifteen or sixteen persons who were duly qualified to vote, and who had endeavored to vote, had been deprived of the power of voting, and had been prevented from voting by the omission of their names from the copies of the voters' lists furnished to the deputies. If these men had voted, the result might have been different. It could not be said how they would have voted, because until the ballot is marked a man may change his mind, and he may vote, and the Ballot Act is for the purpose of enabling him, if he think fit, to vote, contrary to his expressed intention. The votes cannot now be added, and the result is the disfranchisement of a sufficient number of electors to turn the scale. To hold otherwise would be to put the election in the power of the Returning Officer or the Clerk of the Peace: Wordsworth on Elections, 27; Heywood on Elections, 511.

Peters' act was illegal, and a misdemeanor under sections 87 and 90 of the Election Act, and was a corrupt practice which affected the petitioner under section 94. Peters furnished dinners at the polling place for 40 electors at his own expense, and the only question was whether that had been done *corruptly*. *Corruptly* meant "with the motive or intention of affecting the election, not necessarily going as far as bribery:" *Launceston case*, (30 L. T. N. S., 831). The time, the place, all the circumstances favored the corrupt motive. Peters admitted that many of the electors were strangers to him. He was an active partisan, and had done all he could for the petitioner, Cameron, in the election; was chairman of an election meeting called by the petitioner at this very polling place, had spoken there, drove him home to his hotel afterwards, and on the way discussed the propriety of those very dinners. The discussion was renewed on a subsequent occasion, when, on the petitioner saying that he could

be no party to it, Peters proposed to do it at his own expense. The petitioner told him he could not prevent him, but did not want him to do it, and would rather he did not do it. All this clearly showed that both the petitioner and Peters considered it a matter relating to the election, and the doing or not doing of which might affect it favorably or otherwise. On the election day Peters was on the ground early, and distributed his dinner tickets through a friend who knew the electors. It is not only clear the motive was to affect the election, but it must have done so in fact. There were in all 112 votes polled there—49 for Cameron and 63 for MacLennan. It is plain that the distribution of these tickets must have tended to make the petitioner popular, and to create a favorable impression towards him. Besides, Peters carried there several bottles of liquor which were consumed among the electors, and there is evidence of canvassing at least one voter over a glass of whiskey. The corrupt character of the act is therefore plain, and the agency of Peters is equally clear. His presiding and speaking at the election meeting, called by the petitioner and at which he was present, would alone be sufficient to establish the agency: *per* Justice Keogh, *Galway (county) case* (2 O'M. & H. 54, 1872). The notices for this meeting were sent by the petitioner to Peters to be distributed, and they were so. But here there were other circumstances of the strongest kind, especially the repeated discussion with the candidate of the expediency and propriety of the very act complained of as an election move. It was in fact counsel taken between them as to a means of promoting the election. The result of the decisions on the subject of agency is, that an agent is a person exerting himself in the election with the knowledge and approval of the candidate, and the result is that Peters was an agent for whose acts, to the extent of disqualifying him from taking the seat, the petitioner was responsible.

The act of Peters has, however, another very important bearing under section 73; a vote must be taken from the

petitioner for every one of the party who got his dinner free of charge by means of the ticket issued by Peters. This section provides that one vote must be struck off for every elector proved to have been treated. The proof is clear that the dinners were intended for voters. The issue of the tickets made every man's dinner secure long before the time for procuring it. The tickets were all used, and all returned by Mr. Ashby to Peters. The conclusion is that 40 voters dined free. The act is the same as if 40 sums of money instead of 40 tickets had been distributed. It is not necessary to prove in detail that the 40 ticket-holders actually voted—that is the fair and only inference that can be drawn from the evidence. There were 49 voters here for the petitioner. The tickets were sufficient for nearly 80 per cent. of them. If it were a question before a jury the evidence would be clearly sufficient to warrant the conclusion contended for. This test was actually applied in the *Boston case* (31 L. T. N. S. 831, 2 O'M. & H. 161, L. R. 9 C. P. 610). If the forty voters are taken off, then the respondent is entitled to retain the seat, being put in a majority of 37, and the votes left off the lists are not numerous enough to affect the election.

Mr. Cameron, Q. C. (the petitioner), and Mr. F. Osler, contra.

It is not open to the respondent to make use of the first point in his argument. The fourth clause of the list of objections delivered to the petitioner by respondent had set forth that divers persons were ready to vote at the said election, and had intended to vote for the respondent, but their names were omitted from the certified copy of the voters' list; and now when the petitioner had succeeded in proving that twelve or thirteen names had been omitted from the voters' list, that they had tendered their vote for him, and had expressed their intention and desire to vote for him, the respondent endeavored to take the benefit of those errors made against the petitioner, and maintained that the whole election was void. This

was a most unjust argument; for he had shown that if these errors had not been made in the lists, his majority would have been greater than the ballots gave him. There is nothing in the Act to show that an elector may not state aloud in the polling place, after or before an election, or in court, how he would vote, or had voted. The Ontario Act is more strict, but the 77th section was the only one in the Dominion Act. [WILSON, J.—Supposing he should show the ballot?] The question is whether that would make his ballot bad or not. He may tell any one he likes. He is not to show his ticket; that is all.

Peters' act was not done with a corrupt intent. It devolved upon respondent to show that it was so done, but this has not been shown; on the contrary, all the circumstances show that the alleged treating, which appeared to have been done on a single occasion, was done without any corrupt intent, and in such a way as to lead to the inference that it was not intended to influence votes: as to this see the definition of the word "corruptly" as given in the *Launceston case* (30 L. T. N. S. 831). Peters was not an agent for whose acts the petitioner was responsible, and the case is distinguishable from the *Boston case* relied upon by the respondent. As to the taking off the 40 votes, that cannot be done. There was no proof that any of the persons who had voted had been bribed or in any way corrupted by being given the dinner, which was almost an act of charity under the peculiar circumstances of the weather, and the distance the voters had come. It depended on the questions of agency and of corruption, and the case fails in those particulars.

WILSON, J.—The points to be determined in this case are:

1. Whether, on an inspection of the ballot papers which were rejected by the deputy returning officers at the polls, and accordingly as it might seem proper they should be allowed or disallowed, the majority of the whole poll was in favor of the petitioner or the respondent.

2. Whether electors whose names are on the original rolls from which the lists for taking the polls were made, but whose names were by some mistake or otherwise left out of these copies, and who had good votes, and were entitled to vote at the said election, and who claimed to vote, and desired the deputy returning officers to allow them to vote, but who were refused by the deputy returning officers to be furnished with ballot papers for the purpose of voting, and whose tender of votes was refused, could now, in any case, or under any circumstances, be added to the poll of either party.

3. Whether one William Peters was the agent of the petitioner, to render the petitioner answerable for the acts, and consequences of the acts, of Peters in procuring and paying for forty dinners for the petitioner's supporters and voters on the polling day, near to the polling place of the Carden poll at the election, and in taking to the same place a small quantity of whiskey for the use of the voters of the petitioner.

4. Whether, if William Peters was to be considered the agent of the petitioner, the acts of Peters were acts of treating, or bribery and corruption, within the meaning of the statute. If Peters were the agent of the petitioner, and if the act of Peters as to the dinners was treating within the provisions of the statute, then such a number of votes must be taken from the poll of the petitioner that the sitting member would be left greatly in the majority, notwithstanding all other additions which the petitioner could make to his poll, and he would be entitled to retain his seat.

As to the first question, relating to the ballots, the facts showed that the respondent was returned as the member-elect by a majority of three votes, and that there were thirty-nine rejected ballots. Two of that number, both parties agreed, were rightly rejected. The rejected ballots upon which evidence was given were the remaining thirty-seven. These thirty-seven rejected ballots may be classified as follows :

(1.) Those which were marked with a cross in the division or compartment of the ballot paper on which the candidate's name is put; and to the right hand of—that is, *after*—the candidate's name. For Cameron, Nos. 1, 2, 3, 8, 16, 37; for Maclellan, none.

(2.) Those marked on the same compartment to the left hand of—that is, *before*—the candidate's name. For Cameron, No. 14; for Maclellan, none.

(3.) Those marked on the same compartment above or before the candidate's name. For Cameron, Nos. 4, 5; for Maclellan, none.

(4.) Those marked with a mere line, vertical, horizontal, or diagonal; and whether the line is in the compartment where the name is, or in the column to the right of it. For Cameron, Nos. 9, 11, 17, 18, 20, 34; for Maclellan, No. 27.

(5.) Those marked with a cross to the left hand side—that is, in *front*—of the candidate's name in the left column. For Cameron, Nos. 12, 13; for Maclellan, Nos. 21, 25, 26, 30.

(6.) Those marked, not with a proper cross, but having some addition to it, as strokes, which make the cross look like an X, or having lines along the top and bottom of the cross, or a line across the centre of it, or an additional stroke on one arm of the cross, or the form being somewhat like an anchor. For Cameron, Nos. 6, 7, 19; for Maclellan, Nos. 23, 24, 29.

(7.) Those marked with a proper cross, but having some additional mark by which it was said the voter could be identified. For Cameron, No. 4; for Maclellan, Nos. 28, 32, 33.

(8.) Those having no cross, but the candidate's name being written in full or in part, or some letters or initials put in *place* of the cross. For Cameron, Nos. 35, 36; for Maclellan, No. 22.

(9.) One which is marked by a number of lines. For Cameron, none; for Maclellan, No. 31.

(10.) There is one, No. 15, which has a cross for each candidate—making a total of 37; accounting for the whole number of rejected ballots.

I held at the trial, and I am of the same opinion still, that class No. 1, which is composed of crosses to the right hand side of the candidate's name, contains good votes, for, within the very words of the statute, they are "on the right hand side, opposite the name of the candidate;" and though they are in the compartment where the candidate's name is printed, and not in the column to the right of it, which was manifestly intended as the place of the cross, this is of no consequence, for the statute does not say the cross should be put in the column on the right hand of the name, but merely on the right hand side of the name, and opposite it. The two cases referred to at the trial, the *Athlone case* (2 O'M. & H. 186) and the *Wigtown case* (2 O'M. & H. 215), are directly in favor of this view. There is in reality, however, no decision required on the point. The statute has been literally complied with.

Then I also was of opinion at the trial, and I am so still, that the slightly ill-formed crosses contained in class six should not be rejected. It would be too rigid a construction of the statute to apply to it which would exclude a vote and disfranchise the voter because he made a cross with small lines at the ends of the cross, or put a line across the centre of it, or upon one of the limbs of it, or because, in his hurry or confusion, or awkwardness with the pencil, he did not draw two straight lines, but curved one of them so much as to look somewhat like the blades of an anchor, when it is manifest he intended, so far as it is possible to judge, to vote honestly, and to leave or make no mark by which, contrary to the provisions of the statute, he could be identified.

Under the first class the petitioner is entitled to have six of the ballots added to his poll, which would overbalance the majority of the respondent and give the petitioner the majority of three in his favor. Under the sixth class, if the three votes under that class be added

to each of the parties, it will leave their relative numbers the same. And in my opinion they must either all be added or all rejected. But I think they must be added to the poll of each of the parties—three to each of them. That disposes of twelve of the ballots.

If I join classes two, three and five together, and treat them all as if they were ballots, crossed to the left of the name, that would give the petitioner five as against four, or an additional majority of one. It is not material to determine what should be done with these votes, because they do not affect the actual majority under my former ruling. If I were obliged to express an opinion one way or other, I should be disposed to count these votes, although they were not put on the right hand of the candidate's name, but to the left of it. For I am of opinion the Act is not to be read as a declaration that if the cross be not put to the right of the name the ballot should be void. A marking to the left instead of the right of the name is not a cause for which the deputy returning officer is authorized to reject the ballots under sec. 55. The instructions to the voter are that he shall mark the cross with a pencil, but it has been decided that marking it with ink is a good vote. These instructions, too, do not require the voter to put the mark on the right of the candidate's name, as the instructions in the English Act do, but merely to put it opposite the name of the candidate. There are many cases in which a strict compliance with the statute, or its literal observance, has not been required. In the *Athlone case* the crosses to the left were not decided upon. In the *Wigtown case* the majority of the Court thought they were bad.

The fourth class, consisting only of each a single straight line, I do not allow, because there is a fair ground of argument that the elector not having completed his cross did not mean to complete it, and purposely left his will undetermined. In the *Wigtown case* the single lines were not allowed. If they were allowed here, there would be added five to the petitioner's ma-

jority; but so long as the majority exists without that kind of ballot, it is of no great consequence.

The seventh class is one I have had some difficulty in dealing with. No. 28, in which the voter, besides putting the cross for the respondent, has written the respondent's name in full, is certainly bad; for by that writing the voter may be identified, and it is for that cause that the eighth class has been disallowed. That will leave still three ballots of the seventh class, one of which, No. 4, is for the petitioner, and Nos. 32 and 33 are for the respondent. As a matter of fact, I do not think the marks in addition to the cross which are on these papers were put there by the voter in order that he might be identified. But I cannot say it may not have been for such a purpose. The marks in addition to the cross should not have been there. I feel it safer to reject all three. If they were added to the poll it would still leave the petitioner a majority of two. So long, therefore, as that majority stands it is not of any serious consequence what is done with these three votes.

Classes 8, 9, and 10 are rejected for reasons which are sufficiently apparent.

The result of the consideration of this first question is that the majority of votes on the poll is in favor of the petitioner.

As to the second question, the petitioner contended he was entitled to add to his poll the votes of eighteen persons, whose names were stated in a list put in at the trial, because their names were on the last revised assessment roll for the municipality in which they respectively resided—that is, upon the original or proper voters' lists—but were omitted from the copies of the lists which were made for the purpose of this election; and they tendered their votes, which were refused by the deputy returning officers, who also refused to furnish such voters with ballots because their names were not upon the copy of the list which was furnished to them for the purpose of taking the poll. The respondent admitted that thirteen

of the eighteen voters were persons whose names were on the original roll, and were entitled to vote at that election; and as to other two of them, he left them to be judged of by the evidence. The evidence shows that they were also entitled to vote. I think the whole eighteen were entitled to vote at the election. Eight of them said to the deputy returning officer they desired to vote for the petitioner, and they tendered their votes for him. Four others made affidavits of their right to vote, and that they wished to vote for the petitioner; and they gave their affidavits to the deputy returning officer at the poll. The other six tendered their votes, but they did not say for whom they offered them. The respondent alleges that two other persons than those named by the petitioner were entitled to vote, and tendered their votes, but that their votes were rejected because their names were not on the copy of the roll; and that they would have voted for him. The petitioner admits these two persons were entitled to vote. The petitioner alleged that all those he had named would, if they had been allowed to vote, have voted for him. And the respondent alleges that the two he has named would, if they had been allowed to vote, have voted for him. The petitioner claims he is entitled to have, under any circumstances, the eight votes of these persons—who had votes, and who tendered them to the deputy returning officer at the poll, and who tendered them for him, the petitioner—added to his poll. And that he is also entitled to have the votes of those four persons who made affidavits, and gave their affidavits to the deputy returning officers, because they tendered their votes, and they say in the affidavits they intended to vote for the petitioner. The petitioner contends also that in strictness he is entitled to claim the remaining six votes as well, because he has shown by evidence given at the trial that they declared at the poll that they then intended to vote for him, although not to the returning officer. The petitioner at the same time admits that these eighteen names are not any of them of

consequence to him, so long as he has a majority independently of them; and so long as the two omitted names for the respondent are not added to his poll.

The respondent asserts that none of these eighteen votes claimed by the petitioner can be added to the poll, because the new provision as to voting has altered the whole of the former procedure. That the present purpose of the statute is to secure secrecy of voting, to carry into effect the general scheme of legislation on the subject. The law provides that only one elector at a time is to be introduced into the compartment where he fills up his voting paper. He is then to put it into the envelope supplied to him for that purpose, and close it and give it to the deputy returning officer. He is not allowed to take his ballot paper out of the polling station, and all officers, clerks, and agents at the polling place are to maintain secrecy as to the voting in a great many particulars, the observance of which is secured by the penalty of fine or imprisonment; and besides that, no voter shall, in any legal proceeding to question the election or return, be required to state for whom he has voted. And it was argued that there is no other method whatsoever of giving a vote or declaring an intention to vote than by means of the ballot paper. That a verbal statement by the elector to the deputy returning officer of the person for whom he wished to vote was of no avail, for that is not now the mode of voting. And it is said that a voter may alter his mind up to the last moment of his completing the ballot paper; and therefore the most formal tender of his vote in any other manner than by a ballot paper is altogether void. For these reasons the respondent contended no votes could now be added to the poll of either party which were not in the form of ballot papers. However grievous the wrong may be which was done to the elector or to the candidate, it was argued that there was no such remedy as the one now claimed by the petitioner, and if there is a remedy it must be the one which the petitioner has himself set out in his petition as the alternative if he

fail in getting relief in any other way, viz., by avoiding the election altogether, in order that there may be another and a better poll taken. And that in case the majority is against him, the petitioner cannot claim the seat so long as these votes so wrongly excluded from the poll, no matter for whom, or how, they were intended to have been given, are numerous enough, as they certainly are, to influence the result of the election.

The petitioner asserts that there must still be, as there was heretofore, a method of getting the benefit of the votes which were plainly tendered for or can be shown by evidence to have been intended for him. But that under any circumstances the respondent cannot make use of the petitioner's rejected votes, in his (the respondent's) favor, for the purpose of setting aside the election; and that the petitioner's rejected votes cannot influence the election in reality so long as he still keeps the majority by other votes.

By the English Reform Act, 2 & 3 William IV., cap. 45, sec. 59, persons omitted from the register by the revising barrister were permitted to tender their votes at the election, stating for whom they tendered their votes, and the returning officer had to enter in the poll book the votes so tendered, distinguishing them from the votes which he admitted in the ordinary course. There was no such clause in the Irish Act, yet it was decided that where the revising barrister had rejected a name, the person might tender his vote at the poll, and the committee, notwithstanding the want of such a clause in the statute, might afterwards add it if it were one which was properly receivable; *Coleraine case* (P. & K. 503). It is said that a select committee would add the name of a person to the poll in favor of the candidate for whom he tendered his vote at the election, although the statute made no provision in favor of such a person who had been left off the register, and that such power was exercised under the original common law authority of the House of Commons. Warren's Election Law (1857),

359, referring to *Dawson's case*, *Southampton* (P. & K. 226), *Gaunt's case*, *Droitwich* (K. & O. 57), *George's case*, *New Windsor* (K. & O. 163), *Seller's case*, *Lyme Regis* (B. & Aust. 499). In the *Warrington case* (1 O'M. & H. 42-46), Mr. Price, for the petitioner, handed in a list of the persons whose names he claimed should be added to the poll. Martin, B., asked if there was any precedent for adding votes to the poll, when voters had done their utmost to record their votes, and by the mistake of the poll clerk their names were omitted. Mr. Price answered, "I can find no precedent for that." Martin, B. (to Mr. Quain), "I believe you do not dispute that if a vote has been duly tendered it may be added to the poll." Mr. Quain, "Not if in your Lordship's opinion it has been duly tendered." Martin, B., "That is a mere matter of fact for me." As to what should be done to constitute a tender of the vote, the elector must state, at the time he desires to vote, the candidate's name for whom he offers to vote: *Gloucestershire case* (2 Peck. 155). Where it was disputed whether the voters actually named the candidate at the time, the committee held the tender of the votes good because the poll clerk said he had no doubt they offered themselves on behalf of the petitioner, and the circumstances under which the voters appeared before the returning officer may amount to a tender independent of any positive declaration: *Harwich case* (1 Peck. 396). So although the voter was not asked nor said for whom he voted, yet it appearing under circumstances before the returning officer that it could not be mistaken for whom he meant to vote, his vote will be added to the poll (2 Peck. 167 n.) The tender of a vote must be to the proper officer: *Warrington case* (1 O'M. & H. 45, 46). In none of these cases was the tender of vote made under the system of voting by ballot.

In all of the cases now before me on this trial for adjudication, the deputy returning officer refused to give the persons in question ballot papers to vote upon. By the statute no person is entitled to know the candidate

for whom any voter at such polling place is about to vote, or had voted: sec. 72, subsec. 2. Nor shall any person communicate at any time to any person any information obtained at a polling place as to the candidate for whom any voter at such polling place is about to vote, or has voted: subsec. 3.

If the elector must first tender his vote for a candidate to the deputy returning officer before he can properly claim a ballot paper, in a case such as those under consideration, that is, where the elector's name is on the original roll but not on the copy, and where but for that defect he would be unquestionably a good voter to the knowledge of the deputy returning officer, then the rule of secrecy is broken, and the officer becomes aware of the candidate the elector is about to vote for. If the deputy returning officer can demand or must have made to him a good tender, as under the old law, by having the name of the candidate for whom the elector is about to vote declared to him before he can be called upon to furnish the ballot paper, he may apply that rule in every case to persons whose names are on the copy of the list, and entitled to vote, as well as to those whose names are not on the copy, but who are entitled to vote. And yet, unless such a tender of the vote for a particular candidate be then made to the officer, how can a vote for any particular candidate be afterwards entered for him? Assuming there is the power to do so, there is a difficulty certainly in the way. Subsec. 3, above referred to, shows, however, that knowledge of the way the elector intends to vote may come to the officer in some way or other, for he is forbidden to communicate that information to any person. Here, as a fact, there are eight persons who told the officer for whom they desired to vote—that is, for the petitioner; and he got four affidavits from other electors stating for whom they proposed to vote; and there is reason to believe that in the other cases mentioned by Leary, the agent of the petitioner at Eldon Station, No. 4, the votes that the returning officer

there rejected he knew were for the petitioner, because Leary was the petitioner's agent there, and he pressed the deputy returning officer to take the votes and keep the ballots separate from the others. So that if any are added to the petitioner, all of them should be added according to the rule and practice before referred to in such cases.

The principal question, however, is, can any of them be added under the present law. It is plain, if it cannot be done, that the election is in effect placed absolutely and irrevocably, while the law remains as it is, in the power of an unscrupulous deputy returning officer. It rests with him to seat whom he likes, and exclude from Parliament whom he likes, and to disfranchise also whom he likes. A pecuniary recovery had against him for his misconduct is no recompense. The result of the election is not to be nullified if the result can be plainly and satisfactorily made out by such an examination as a committee of the House could always, by its common law powers, apply to the case.

I have referred to the exercise of these common law powers in cases which had not been provided for, and I have referred to a case at law where the election Judge added on votes and disposed of others according as he thought they had been regularly tendered or not, although the statute under which he acted made no mention of any such power. The same course was pursued in this country before the voting by ballot was introduced. The Judge may, under the 73rd and 94th sections, strike votes off in cases of bribery, treating, or undue influence.

The deputy returning officer may reject ballot papers in five cases : sec. 55—(1.) When they are not similar to those supplied by him, (2) or are contained in any envelope different from that supplied by him. (3.) All those by which votes have been given for more candidates than are to be elected. (4.) All those contained in the same envelope when such envelope contains more than one. (5.) And all those upon which there is any writing or mark by which the voter can be identified. He can

reject them, perhaps, in some other cases, although they are not specified ; but, whether he can or not, are illegal votes to stand when it is plainly proved they have been given ? If a woman, or a minor, or an alien vote, who are all incompetent—are their votes to stand ? If there be plain rank personation, both of the living and the dead ; or there be no such property as that voted upon ; or if the Judges who are disqualified from voting do vote—are these votes to stand ? Is there no redress but a new election, where the same thing may happen again ? If these votes can be struck off, what is there to prevent proper votes from being added on ?

Nothing that I see but the manner of giving the vote now being by a ballot paper in place of its being *viva voce* as formerly ; and the purpose of the new Act being to secure secrecy on grounds of public policy, whereas the voting was openly given before. The manner of voting by a paper should not, if it be possible to avoid it, be held in any manner to lead to a disfranchisement because the deputy returning officer has wantonly or ignorantly refused to deliver ballots to those who are entitled to have them and to use them. To say that the vote cannot be allowed—either by the House of Commons, or by the Courts or Judges acting for and representing the House of Commons—because it has not been given by ballot paper, and that the deputy returning officer can wilfully, vexatiously or ignorantly refuse to furnish the ballots, is not only to make him master of the election, but is to make the wrongful act on his part, the justification for not being able to remedy the mischief and injury he has caused. The whole power and policy of the law, and the rights and privileges of the House of Commons to control these elections, and to grant relief against mistakes or misconduct, cannot have been surrendered, nor the rights and interest of the candidates and the electors given up, because the House assented to have these controverted elections tried by a different tribunal than that of their own committee ; or, as it is expressed, because

they thought it was “‘expedient’ to make better provision for the trial of election petitions, and the decision of matters connected with controverted elections of members of the House of Commons of Canada.” The Court is to exercise the like “power, jurisdiction and authority with reference to an election petition, and the proceedings thereon, as if such petition were an ordinary cause within its jurisdiction.” The English Act, 31 & 32 Vict., c. 125, passed in July, 1868, was one under which the *Warrington case* was tried before Martin, B., and from which our first Controverted Election Act was taken, and there is no greater power given by it than was given by our Act of 1873 to the Judge to add on votes, and yet it was done in that case, and the right to do so was not disputed.

The only change in the law since then is that the voting is by ballot. But for the reason before given, I do not look upon that as an invincible reason against the exercise of the power of adding on or rejecting votes, if the fact of how the vote was then tendered can, notwithstanding the difficulties in the way of acquiring such information, be made as apparent to the Judge under the new system as it could have been under the former system. Here, from the express declaration to, or in the hearing of, the deputy returning officer by some of the electors, by naming the candidate for whom they desired to be allowed to vote, and claiming to have the right to vote for the particular candidate they wished to vote for, and for whom they tendered their votes, is placed beyond a doubt; and there is sufficient evidence, in my mind, to lead to the conclusion that in most if not in all of the other cases in question, the deputy returning officer knew distinctly, from the circumstances accompanying the claim to vote, as by the affidavits given to him and the particular agent who was pressing the reception of the votes, that such person intended and desired to vote for a particular candidate, although the name of the candidate was not mentioned at the time.

If it became necessary, to settle this election, that I should determine the claim made to add on these votes—or such of them as may be held to have been duly tendered for a particular candidate under the former law—I should have been obliged to have decided the matter one way or the other, and I should have determined it in that manner which is most consistent with the old law, and in that manner which would have saved the disfranchisement of electors, and which would have spared the necessity of a new election, merely to discover the sense of the riding as to which of the candidates had the majority, when that fact was made quite apparent to me by the evidence which I had already before me; and I should have reported the matter fully to the House of Commons, with my reasons for so acting and deciding. It would have been my duty to try the election petition and any matter put in issue by it. There is the power to add on or strike off votes given by ballot, although the Act does not in terms say so. I am doing so in this very case according to the ballots, and I think I have the power to deal with votes which were duly tendered, as under the old law, when a ballot was duly requested by the voter, and was wrongly refused by the officer. It is true secrecy is not preserved in such a case. But if it is necessary to preserve the right of voting, and if that can be done only by divulging, from necessity, for whom the elector intended to vote, I should say the necessity justified the declaration he was forced to make, and there is nothing in the Act which prevents an elector from saying, if he choose to say, for whom he intends to vote. It is true the only mode of voting is by ballot, and that the elector may change his mind up to the moment of putting his cross on the paper. But I am dealing with cases in which the electors have been refused the ballot papers and have had their votes rejected. And if the question is at last reduced to this, whether any person can be said to have had a right to vote to whom the deputy returning officer has refused to give a ballot paper, I have no

hesitation in answering that in the affirmative. Were it otherwise there would be an end of election by the people, and it would follow that because the officer had wrongfully refused to give a ballot paper to a good voter, the voter had not a vote in fact or in law.

It is true the election may be avoided if these rejected votes would have affected the result of the election ; but that is no proper remedy to the voter, and a new election is a serious matter, and is surely not to be resorted to but in the last extremity, and only if no other adequate remedy can be found, and it must be borne in mind that the new election does not determine who should have been returned at the former election, for there may be a different voters' list, death and other circumstances may have changed the constituency, and the opinions of the electors may have since been altered. But in my opinion here is another and a better remedy. I have expressed my opinion on it at large because it is an important matter, although in my opinion I am not obliged to act upon the votes which were so rejected, and I do not act upon them. These votes would add to the petitioner's majority. But the majority he has without these votes is sufficient for the purposes of this election : unless that result can be impeached upon the charge of bribery and treating, which has been made against him, and if it can be sustained, then it is still of no consequence whether the votes last referred to be added to the first named majority of three or not, because a greater number of votes than all the classes in the petitioner's favor combined will have to be struck from his poll.

This brings me to the next question—the one as to the alleged agency of William Peters. So much stress and reliance have been placed upon this part of the case that I shall be obliged to state precisely what the evidence was, which it is said constitutes the bribery and treating by Peters, and the alleged agency of Peters for the petitioner. I shall first of all state what, according to my opinion from the decided cases, it is required as necessary to establish the fact of agency by any person on behalf of a candidate.

In the *Hereford case* (21 L. T. N. S. 119), Blackburn, J., said: "In the common law a man is not responsible for the act of his agent except when it is done directly according to an authority which is given to him. In parliamentary law it is otherwise. A candidate who has really meant that his agent should not commit a corrupt act is nevertheless responsible to the extent of losing his seat if the agent does commit a corrupt act. And for that difference in the law, established by parliamentary committees formerly, and now recognized by statute, it seems to me there are two principal motives, I will not say they are the only ones, but they are two principal motives. It would not be possible to unseat a person for corrupt practices, if he were permitted, by the means of persons who acted for him or who brought him forward, either one or the other, to obtain the benefit of their aid, if he were not to be also responsible to the extent of losing his seat for the corrupt practices that were done by them for his benefit. That is one of the great reasons for which, as a matter of public policy, it was thought necessary, in order that it might check corrupt practices, to establish that principle. Another, and a very considerable reason no doubt, was that in all elections where extensive corrupt practices, bribery and the like prevailed, great care was always taken that the candidate should be ignorant about it. . . . And from the loose morality which formerly did prevail at elections, and which I do not say is completely got rid of, candidates did think themselves bound in honor to pay, and did pay. . . . And the question very much was, was that agent, when doing the thing, in such a position that there would be that claim on the candidate, according to the false morality of parliamentary election matters, to recoup him for what he had done? Now those are two reasons for the parliamentary law differing from the common law. They were not the only ones, but they do give two very good guides and assistances. And I apprehend that in a case where corrupt practices are shown, which the candidates themselves

are not cognizant of, you must bear these two principal reasons in mind, and then, exercising what may be called common sense, you must see—does the particular corrupt act come within the rule as an act done by an agent? If it does not, then, though the person may have been canvassing the town, or speaking on one side or the other, still we could not say that the candidate should be unseated on that account. Every bit of canvassing and acting for a candidate is evidence to show agency; but the result cannot depend on any precise rule that I could define.”

The acts in question in the case just referred to were that one Harrison, who had a number of workmen in his employment, gave a breakfast to them on the morning of the poll; he expected about 40, but about 70 came he told the men that they could bring their friends with them. He ordered a break and three omnibuses on the polling day and drove some to the poll, remaining on the box while they went into the polling booth. He was a Liberal. There were several Conservative voters among his guests. He swore the breakfast was not given to influence the voters. He was not on the Liberal committee. He attended the committee room once or twice to make inquiries. He received a book from the clerk of the Liberal committee containing the names of his men who were voters. He accompanied Mr. Bosley (an acknowledged agent of the candidate) once or twice when he was canvassing. He received letters from the Liberal candidate thanking him for the services he had rendered at the election. He said he acted only as a volunteer. He took three sets of voters to the poll, and afterwards drove them to his house. His house was clear by one o'clock. Bodenham, an agent of the candidate, asked Harrison to canvass two named voters, which he did. The invitation to breakfast was to everybody, and to everybody's friends; it was to the whole town, and everybody that liked to come was to come. Edwards, the committee clerk, invited people there and brought

them up. So did Williams, Rowlands, Lloyd, and probably others who were committee men did the like. The Judge then said, "I do not say that any one of these things would satisfy me that Harrison was an agent. Taking simply the fact that he gave this breakfast, or merely that he had gone with Mr. Bosley to canvass, I do not say that that would satisfy me, though it goes strongly to prove it; nor would the fact that Bosley had spoken of him afterwards as having done such good service; nor yet do I say that the fact that Williams, a committee man, brought people to the breakfast would satisfy me; nor yet that Edwards, who had been employed about those railway men to some extent, brought people up to breakfast; nor yet that Lloyd was there; nor yet that Davis was there. No one of these things, by itself, satisfies me that Harrison's breakfast was one for which the party are to be considered responsible; yet, taking them altogether, a number of little pieces of evidence do produce an effect on my mind which leads me to say that, according to the usual rules in parliamentary matters, this, which is certainly an act of corruption, is so closely brought home to the agents and persons in authority as to constitute them accessories to it, and for which the candidates ought to be responsible. I cannot come to any other conclusion than that this act is one which avoids the election."

There is one other case to which I shall refer for the language of the Judge—the *Taunton case* (30 L. T. N. S. 125). Grove, J., said: "I am of opinion that to establish agency for which the candidate would be responsible, he must be proved to have by himself, or by his authorized agent, employed the persons whose conduct is impugned to act in his behalf, or have to some extent put himself in their hands, or to have made common cause with them—all these, or either of these—for the purpose of promoting his election. Mere non-interference with parties who, feeling an interest in the success of the candidate, may act in support of his candidature, is not sufficient in my

judgment to saddle the candidate with any unlawful acts of which the tribunal is satisfied he or his authorized agent is ignorant."

In the *Westbury case* (20 L. T. N. S. 24), Willes, J., said: "If I find a person's name on a committee from the beginning, that he attended meetings of it, that he also canvassed, that his canvass was recognized, I must require considerable argument to satisfy me that he was not an agent within the meaning of the Act." In the same case (1 O'M. & H. 48) it is also said, that authority to canvass certain workmen would not be an authority to canvass beyond those workmen. With respect to anything done as to voters other than those workmen, it might very well be said that was no agency, but within the scope of the authority to act as agent there was quite as strong a responsibility, on the part of the candidate, as there would be in the case of a general authority to canvass.

In the *Penryn case* (C. & D. 61) one Sewell, on the authority of resolutions passed at a meeting in the borough, went to London and brought down the sitting member as a candidate. The two attended a meeting together, going there in company. Sewell was appointed chairman by the company present. It was a meeting of the sitting member's friends. Sewell accompanied the member generally on his canvass, and he attended on the hustings. During the poll Sewell introduced a voter, saying he, Sewell, had brought him down as a candidate, and Sewell was not called on to contradict these facts. *Held*, that agency was established.

Speaking prominently on the hustings in support of a candidate, and canvassing on his behalf, coupled with offers of money, constitute a man an agent to the extent of proving corrupt practices: *Lancaster case* (14 L. T. N. S. 276).

The parliamentary practice of holding candidates civilly responsible for the acts of their agents, although the agents have exceeded the limits of their power, rests on a better and more satisfactory basis than is commonly

ascribed to it. It is this: It is a well known rule of law and of equity that a person cannot take the advantage of an act procured by and founded on the fraud of another, although it is committed by that other as his agent, without his knowledge, without being liable to lose that which he has gained by such means, or to be in some other respects liable for the fraud: *Barwick v. English Joint Stock Bank* (L. R. 2 Ex. 259); *Udell v. Atherton* (7 H. & N. 172, as explained in L. R. 2 Ex. 265); *New Brunswick R. R. Co. v. Connybeare* (9 H. L. 711). It would be manifestly unjust to the public that a candidate should secure his election by the corruption, or other improper means of his agent; and while taking the benefit of the acts done, repudiate the exercise of those powers which the other as his general agent had used for his benefit, and in his business and interest, although the agent was not authorized to do these specific acts. The public can have no relief in such a case, and it is the public which is most concerned, but by the invalidation of everything which has been wrongfully accomplished by such means.

The agency which I must determine to exist or not is this: Did the candidate authorize the person whose conduct is impugned to act in his behalf? Or, did the candidate to some extent put himself in the other's hands, or make common cause with him in the election, and for the purpose of promoting it? And the means by which I must determine it are the evidence which was given before me, tested by the rules and instances so copiously given in the different election reports, and sufficiently referred to in the cases which I have before mentioned.

The person said to have been the petitioner's agent is William Peters. It is better I should consider and dispose of this part of the case before determining whether the act charged against Peters was an act done corruptly or not, because that matter would possibly require more consideration than the one of agency; and if it should appear there was no agency, it will become unnecessary to consider the nature of the act done by Peters in any way. As to

the alleged agency, Peters said in effect, that he was an inn-keeper on the Victoria Road, and kept the inn there before and at the time of the last election. There was a meeting at Ashby's house, in the township of Carden, before the election. It was Cameron's meeting. Witness thinks he was chairman of the meeting. He took Cameron's side at the election and at the meeting. He opened the meeting. He said Cameron was there canvassing for the election. Did not know who moved he should be chairman. He put up some notices in his house of that meeting, and he sent some by Ashby or by some of the neighbors. The notices were sent to witness to be distributed. Cameron was up at witness' inn several times when he was in that part. Cameron came from Ashby's meeting in witness' cutter, and put up at witness' inn that night. There was no understanding that witness should be at the meeting. He was at the place of polling on election day. He never asked a man that day to vote on one side or the other. The following is in his own words: "Two or three days before the election I asked Ashby if he was going to get up dinners for the voters. He said he was not. He had done it before, and people did not pay him, and he was a poor man, and he could not do it for nothing. I told him he had better get up the dinners on account of the voters having to come so far to vote, and no place for them to get dinner. He said he could not unless some one would guarantee to pay for it; that at a former time he had given dinner to about eighty, and some one went round with a hat and gathered up \$4.50, and that was all he got. I told him if he would get up the dinners I would guarantee and see him paid for forty dinners. I asked what he would charge apiece, and he said twenty-five cents. I said I would give him twenty cents apiece; it was enough, as I had to pay it out of my own pocket. He would not agree to it for less than twenty-five cents. I told him to get up the dinners. I paid for the forty dinners. . . . I spoke to Cameron about making such an arrangement before speaking to Ashby.

He said he could not do it unless Maclennan and he agreed to do it; that he durst not do it; we could not interfere in it; that the law would not allow it. I said the law must be very strict if it would not allow a man to get his dinner. I asked him if it would hurt the election if I paid for the dinners out of my own pocket. He said he did not know; he said he could not do anything about it unless with Maclennan's consent. I don't recollect if I told him I would give the dinners. Cameron and I did not speak of the way it was to be done. He did not seem to approve of it, in case it should interfere with his election. . . . I made an arrangement with Ashby that I was to pay for forty of Mr. Cameron's voters. . . . I took no steps to get my money back. I took three bottles of whiskey that day from my place to Ashby's—other people did so too. I left the whiskey in care of Mr. Malally, the father of Mrs. Connors, at Mr. S. Connors' house. I think I gave a treat as well to some of Maclennan's friends as to Cameron's. I refused to give James Sample his bitters because he had not voted. I said to go and vote; I would not treat him till after that, in case it should be said I had bribed him. He did not get his bitters." In cross-examination he said: "I do not recollect I ever canvassed any voter; there was no tavern nearer Ashby's than my place, a distance of five miles. ~~and~~ I heard the people say they had to come twenty or twenty-five miles to vote there. Cameron had his own team at Ashby's the night of the meeting. I asked him to ride with me, and he did so; it was by chance he rode with me. Cameron told me a candidate could not provide dinners for voters for the purpose of influencing their votes, directly or indirectly; that there was no way of his getting round it only with Maclennan's consent. I never applied to Mr. Cameron for payment of the \$10, and never expected it. I never got from him any money but the ordinary tavern bills while he stopped at my house. I did not know if the persons I gave some of the tickets for dinner to had votes or not; or whether they were for

MacLennan or not. I kept cautious as I was giving dinner not to ask any man for his vote, in case MacLennan got a claw on me. I was not a voter."

The petitioner was examined on his own behalf. He said it was while driving with Peters from Ashby's meeting that Peters first spoke to him of the dinners. Peters said some arrangement should be made for dinners for those who came a long way to vote. "He asked me if I could make any such arrangement. I said I could not, directly or indirectly; the law was very strict, and I would not jeopardise the election by anything of the kind. I was sorry for the people, and I would see MacLennan and speak to him, and we might come to some arrangement about it. When I saw MacLennan it escaped my memory. Some days after that Peters spoke to me again of the dinners. I said I had forgotten to speak of it to MacLennan, that I could make no arrangement, or be a party to it in any way. He asked me if there was any harm in his paying for the dinners out of his own pocket, if he chose to do so. I said I could not prevent him if he chose to do it; but I did not want him to do it, as exceptions might be taken to it; that if done by an agent it was the same as if done by myself; and although he was not my agent, I would rather he would not do it. I never spoke to Ashby on the subject nor he to me. I did not hear or know of Peters giving dinners on that day, and I was at the poll there from about two p.m. till after the poll closed. I was in the polling room nearly all the time."

That is all the evidence material on this part of the case. Is there upon this statement any evidence of the petitioner having appointed Peters his agent, or of his allowing or authorizing him to act on his behalf? Is there any evidence that the petitioner to some extent put himself in the hands of Peters for the purpose of the election? I think I must say that a perusal of the evidence shows there is not a particle of evidence to sustain the assertion that Peters was the agent of the petitioner.

The fact of presiding by chance, as it were, at the petitioner's meeting at Ashby's, at which the petitioner was present, and at which Peters was present just as any one of the neighbors in that part upon both sides was present, and of his opening the meeting by speaking a few words in favor of the petitioner, are circumstances not to be wholly disregarded in trying the question of agency or no agency, but they are utterly insufficient of themselves to show that the petitioner had thereby to any extent put himself in the hands of such a person to represent him as a general agent. So also the receiving of some bills by Peters, and his putting some of them up for the intended meeting and some of them up in his own house, and forwarding others for distribution, are of no weight whatever alone to show anything like agency on his part. It was not shown the petitioner knew of the bills being so sent to and in turn sent off by Peters, and if he had known it such acts would have had force only by what they could add to other matters, but they would have been of no significance whatever of themselves. Nor do they, with the addition of the fact of the chairmanship and of the short address of Peters, amount to anything requiring any serious consideration. They do not show that the petitioner put himself in Peters' hands, or suffered Peters to act for and represent him.

If an agency could be made out of these materials, it would, under the law, already severe enough in that respect, be quite intolerable. It would exclude the commonest acts of kindness and hospitality between neighbors. It would ostracize the candidate by keeping him estranged from the electors, who should have every opportunity of becoming acquainted with him. It would prevent association at a time when combination was especially useful, and it would well-nigh stop social intercourse altogether. I entertain no doubt that the acts to which I have alluded are not, and cannot be deemed sufficient to establish agency for any purpose or to any extent, and thinking so, it is right I should plainly say so.

Then, did the conversation between the two as to the dinner constitute Peters the agent of the petitioner? It was not contended by the respondent that the first conversation was sufficient to establish the character of agent or agency. No doubt it did not do so, but repelled it altogether. The second conversation, it was contended, did, of course in connection with all the other circumstances, and by the force and effect of their addition and accumulation, create Peters the agent of the petitioner for the purpose of providing for the dinners which were given and paid for by him. It is so contended, because the petitioner said among other things, when he was asked by Peters if there was any harm in Peters paying for the dinner out of his own pocket if he chose to do so, and he, the petitioner, answered that he could not prevent him if he chose to do it, but he did not want him to do it, and he would rather Peters would not do it; and it was argued by the respondent that the petitioner was bound to have given a positive denial to Peters. That the petitioner should have told him he must not do it, or that he should not have used such language as that he, the petitioner, could not allow him to do it, and that he, the petitioner, could not prevent him and did not want him to do it, and he would rather it was not done. But can it be said if such language even as that is used, and the speaker really means what he said, and is not covertly affording an approval of the act he is assuming and pretending to condemn—and I have not the least reason for thinking the petitioner did not really mean what he said—that agency has been established, that the petitioner had put himself into the hands of Peters for that purpose? The language of Mr. Justice Grove, already quoted, is: “Mere non-interference with parties who, feeling an interest in the success of the candidate, may act in support of his candidature, is not sufficient in my judgment to saddle the candidate with any unlawful acts of which the tribunal is satisfied he or his authorized agent is ignorant.” But the petitioner said more, far more, than the respondent

has, on his argument addressed to me, assumed he did say. The petitioner plainly disclaimed having anything of the kind done, or recognising it if it were done. In my opinion the petitioner repudiated all connection with the business of the dinners, and Peters perfectly understood he did so, and that he was doing so.

While the numerical majority is on the side of the petitioner, I must consider him to be the person who is rightfully entitled to the seat until that right is displaced, and I must look upon the charge which is made against him as if it were in effect made against the sitting member. In the language of Martin, B., in the *Warrington case* (1 O'M. & H. 44), "I adhere to what Mr. Justice Willes said at Lichfield, that a Judge to upset an election ought to be satisfied beyond all doubt that the election was void, and that the return of a member is a serious matter, and not to be lightly set aside." I refer also to what was said by the same Judge in the *Wigan case* (1 O'M. & H. 192): "If I am satisfied that the candidates honestly intended to comply with the law, and meant to obey it, and that they themselves did not act contrary to the law, and *bona fide* intended that no person employed in the election should do any act contrary to the law, I will not unseat such persons upon the supposed act of an agent unless the act is established to my entire satisfaction."

I apply the same language to this case, and I add that I will not unseat the sitting member or prevent the person who has the numerical majority from having the seat upon the supposed act of an agent unless the agency is established to my entire satisfaction, and in this case that has not been done; on the contrary, the fact of agency has been disproved, disclaimed, and repudiated in the most explicit and emphatic manner; and it is well that it is so, for it is the only act that has been mentioned as having been done throughout this election of the nature attributed to it; and no doubt, if there had been any acts of a more serious or even of the like nature, they would not have lain concealed, considering the strong personal interests

which enter into contests in this constituency, where the majorities in several of the late elections have been only three or four for the successful candidate.

I must say this election contrasts most favorably, for all parties, with some of those which have been held in other places, and which have not been creditable to the parties concerned, and which must sorely have tried the faith of those who believe in the excellency of popular representation, when they find those who were supposed to be the honest and actual choice of those who were supposed to be the free and independent electors of a constituency holding their seats by the mere force of money or undue influence; not by an election, but by a contract of sale and purchase which was as bad on the side of the purchased as on that of the purchasers. From all that, and anything approaching it in any respect, this election and the candidates stand unquestionably free.

I have already said that if the charge of agency were not maintained, and in my opinion it has not, it would be unnecessary to consider whether the giving of dinners by Peters was or was not bribery, or treating within the meaning of the Act. The point was argued before me very fully by the respective parties, and many cases were cited as applicable to it. I am not sure what opinion I should have formed with respect to it. It is not improbable, if the agency had been established, that although the electors had come from ten to twenty-five miles to the poll, and there was no inn nearer than five miles to it, I should have held it to have been a violation of the statute. I must, of course, have been satisfied that it was corruptly done; that is, done for the purpose of influencing the election either by voting or not voting, before I could have found the offence to have been committed; and it is not so perfectly plain that a free dinner, given by a candidate to a hungry voter, who has travelled twenty miles in a Canadian winter day in January to the poll, is necessarily, and as a mere consequence, a corrupt act. I do not know any law which would prevent a candidate

from giving a voter in such a season, and on such an emergency, a bit of bread and cheese for himself, or a lock of hay and a drink of water for his horses. These are matters of degree : the manner in which, and the number perhaps to whom, these services were rendered, and the more or less need there was for the act, must all be considered. Such questions are difficult to deal with, because of the almost inevitable tendency they have to operate upon the voter, and the difficulty there is in discovering the true motive for the candidate's liberality at such a time, and the danger there is in permitting any such thing to be done when the gain is so immediate and it is so very likely to be the leading cause for so much activity and kindness. It is sufficient to say that I have not made up my mind on that part of the case, and I am glad it is not necessary I should do so. My leaning, however, at present is more against the rightfulness and lawfulness of that transaction than in support of it.

I have given this case a careful consideration, and determining this matter of agency as I do, I must decide that the petitioner having the majority of votes in his favor, upon an inspection of the ballot papers only, is the person who was duly elected for the North Riding of the County of Victoria, at the last election for the Dominion Parliament, held for the said North Riding, and that he should have been returned as the person so duly elected, and that the election and return of the respondent for the said riding at the time aforesaid were and are void.

I must award the general costs of the cause and proceedings to the petitioner to be paid by the respondent, with the exception of the costs relating to that part of the petition which applies to the voters whose names were not upon the copies of lists furnished to the deputy returning officers, but who were entitled to vote, and should have been admitted to vote at the said election, because I have not judicially determined that part of the petition, and with the exception of the cost of the scrutiny

of the ballots, because such rejected ballots were not the fault of either party, but of the deputy returning officers. The parties must each bear his own costs with respect to these last mentioned matters.*

The petitioner appealed to the Court of Queen's Bench, but the Court affirmed the judgment of Mr. Justice Wilson (37 Q. B. 234).

(10 *Commons Journal*, 1876, p. 24).

SOUTH RENFREW (2).

BEFORE MR. JUSTICE WILSON.

RENFREW, 21st September, 1875.

WILLIAM MCKAY *et al.*, *Petitioners*, v. JOHN LORN
MCDougall, *Respondent*.

Defective Nomination Papers—Returning Officer—Costs.

The nomination paper of B., one of the candidates at the election complained of, was signed by twenty-five persons, and had the affidavit of the attesting witness duly sworn to as required by the statute. The election clerk found that one of the twenty-five persons was not entered on the voters' lists, and thereupon the returning officer and election clerk compared the names on the nomination paper with the certified voters' lists in his possession, and on finding that only twenty-four of the persons who had so signed were duly qualified electors, he rejected B's. nomination paper, and returned the respondent as member elect.

Held, 1. That as the policy of the law is to have no scrutiny, or as little as possible, in election cases, and to give the people a full voice in choosing their representatives, the defect in the nomination paper was one to which the returning officer should not have yielded.

2. That if the election had gone on the defect in the nomination paper would not, according to the 20th section of 37 Vic., c. 9, have affected the result of the election.

Semble, that the returning officer is both a ministerial and a judicial officer; and that he might decline to receive the nomination of persons disqualified by *status* or office, and also nomination papers signed by unqualified persons if he had good reasons for so doing.

The returning officer having acted honestly and fairly in rejecting the nomination paper, each party to the petition was left to bear his own costs.

The former election for this constituency having been declared void (*ante* p. 556), a new election was held on 24th October, 1874, at which Mr. William Bannerman and the respondent were candidates. The returning

* See the case as to the revision of costs, 39 Q. B. 147.

officer rejected Mr. Bannerman's nomination paper on the facts set out below, and returned the respondent as member elect. The petition was thereupon filed to set aside the election.

Mr. Cockburn, Q.C., for petitioner.

Mr. Bethune for respondent.

The evidence showed that on the day of nomination the nomination papers of William Bannerman and of the respondent were delivered to the returning officer. The election clerk, on examining them, found that Bannerman's nomination paper had twenty-five names thereon, but that one of the twenty-five was not on the voters' lists. The returning officer then took legal advice, and on comparing the names with the official copies of the voters' lists, found that William Tierney, one of Bannerman's nominators, was not qualified as a voter. Bannerman's nomination paper had been duly sworn to by one Muir according to the statute. Some negotiations then took place between the respective candidates and the returning officer to allow the nomination papers to be amended, although the hour for closing the nominations had passed, but the friends of the respondent would not consent, and thereupon the returning officer, acting under legal advice, rejected the defective nomination paper, and returned the respondent as member elect. The other facts appear in the judgment.

WILSON, J.—The petitioners complain of the rejection of Mr. Bannerman's nomination paper. It is not said that Tierney's name was then upon the list, nor is it contended so now; and it appears he was not on the assessment roll for 1873, in respect of real property, but it is said there were the names of twenty-five persons on the nomination paper as, and purporting to be, the names of actual *bona fide* electors of the South Riding, and twenty-four of them are so in fact, and the twenty-fifth was honestly believed to be so too. That it was a

genuine paper and not a sham document, and being so, although as a fact William Tierney was not an elector, yet the paper being duly sworn to according to the statute, the returning officer was bound to accept it, and to act upon it as a genuine truthful document. It is said that he and the election clerk raised and took an objection which was not apparent on the face of the document, and that they discovered it by an examination of the voters' lists, and that such a proceeding was in effect a judicial investigation and inquisition held without authority, and determined contrary to law. For the respondent, it is said that the returning officer is not wholly and only a ministerial officer; that he is necessarily, and in fact has certain judicial functions to perform; that he is by section 11 of the Act to decide on the number of polling places to be appointed; that he has to grant a poll by section 24 if more candidates than can be returned are nominated in the manner required by the Act; and he is by section 23 to report any nomination proposed or rejected for non-compliance with the requirements of the Act; and that in all cases when the objection to the candidate or voter or to the nomination paper is patent or notorious, he may act judicially; and that he cannot receive a nomination paper with only twenty-four names to it, for that would be the same as if he received it with less than the number of twenty-five electors in fact upon it.

I am of opinion the returning officer is both a ministerial and a judicial officer. He has not now, as formerly, to hold an inquisition into the capacity or qualification of a candidate or voter; but I feel assured if a person appeared and was nominated, and such candidate were a woman or a mere child, that the returning officer could decline to receive such a nomination, and in like manner he can decline to receive the nomination of a Chief Justice or the Speaker of the Senate. I think also he may refuse a nomination paper signed by less than twenty-five electors, because the Act requires that the nomination shall be by twenty-five. I am disposed to

think, too, he can reject a paper signed by twenty-five if it were declared by the candidate that the paper was a sham; that the names were those of persons who were not electors at all, and never had been; or that half the names were forgeries; and if there were good reasons for the returning officer to believe that statement, and he did believe it.

It is not every paper in the form of a nomination paper, however formally it may be prepared, that is to govern a returning officer, for that would be to make a farce of the whole proceeding, and to put parties to an unnecessary and vexatious expense, when it was known beforehand that it would be all to no purpose.

I feel a great difficulty in dealing with this case. The nomination paper was formally, on its face, correct. It was prepared and intended to be a correct document. It was honestly believed to be correct, and it was used fairly and truly for the purpose of an election, and it was a surprise to Mr. Bannerman and Mr. Muir, the attestant, to discover that William Tierney, one of the twenty-five, was not entered on the voters' list. I have no doubt the returning officer acted honestly and with perfect propriety in all respects according to the best of his judgment, and he acted on the legal advice which he sought for and followed in rejecting the paper. He had the means, to some extent, by him to verify the correctness of the persons' names in the paper being electors or not—assuming that *electors* mean those persons who were electors on the lists *to be used at that election*.

I think, however, with much hesitation, that the defect in this case, which I have no doubt exists, was one to which the returning officer should not have yielded, and it certainly was not accepted or yielded to by Mr. Bannerman, but was resisted by him, and the fact that the affidavit was wrong at all was denied by Mr. Muir. By reason of this one defect—one rather of form than of substance, for Tierney was in fact a real property holder who should have been on the list, and a defect not

appearing on the paper, but found by an examination of it with the voters' lists—the electors have been prevented from voting for and electing their own representative, when, in truth, if the election had gone on, this defect could not in any manner whatever, according to the 80th section, have affected the result of the election.

The policy of the law certainly is to have no scrutiny, or as little as possible, in such cases, and to give the people a full voice in choosing their own representatives. That has not been done here, and I must hold the election, according to the best opinion I can form, to be void. I acquit the returning officer in every respect from all blame, and I am of opinion he acted honestly and fairly to all parties; and if he erred, which, with some doubt, I think he did, he did so where many might equally have erred. He was anxious to have no difficulty raised, and his judgment was fortified by competent legal advice. I must leave each party to bear his own costs.

(10 *Commons Journal*, 1876, p. 32.)

NORTH RENFREW.

BEFORE MR. JUSTICE WILSON.

PEMBROKE, 30th June, 1st and 2nd July, 1875.

BEFORE THE COURT OF QUEEN'S BENCH.

TORONTO, 2nd and 23rd December, 1875.

PETER WHITE, *Petitioner*, v. WILLIAM MURRAY,
Respondent.

Cumulative evidence—Offers and promises affirmed and denied—Costs.

A number of separate charges of corrupt practices against an agent of the respondent, based upon offers or promises, and not upon any act of such agent, each of which depended upon the oath of a witness to the offer or promise, but each one of which such agent directly contradicted, or gave a different color to the language, or a different turn to the expressions used, which quite altered the meaning of the conversations detailed, or constituted in effect a complete or substantial denial of the charges attempted to be proved against such agent

Held, 1. That although in acting on such conflicting testimony, where there was a separate opposing witness in each case to the testimony of the witness supporting the charge, the Election Judge might be obliged to hold each charge as answered and repelled by the counter evidence, he could not give the like effect to the testimony of the same witness in each of the cases where the only opposing witness is confronted by the adverse testimony of a number of witnesses, who, though they do not corroborate one another by speaking to the same matter, are contradicted in each case by the one witness.

2. That the more frequently a witness is contradicted by others, although each opposing witness contradicts him on a single point, the more is confidence in such witness affected, until, by a number of contradicting witnesses, he may be disbelieved altogether.

3. That acting on the above, and on a consideration whether the story told by the witness in support of the charge is reasonable or probable in itself, the charges of corrupt practices against the agent of the respondent, set out in the judgment, were proved.

The petitioner was held entitled to the costs of the charges on which he succeeded, and the respondent to the costs of the charges on which the petitioner failed.

The election held on the 29th January, 1874, having been avoided (9 *Commons Journal*, 1875, p. 6), a new election was held under the Dominion Elections Act, 1874, at which the respondent was declared elected. A petition was then presented against his return, containing the usual charges of corrupt practices.

Mr. F. Osler and Mr. Thomas Deacon for petitioner.

Mr. MacLennan, Q.C., for respondent.

The evidences in support of the charges in the petition are set out in the judgment.

WILSON, J.—At the close of the evidence there was nothing shown to sustain either the personal charges or those alleged to have been committed by an agent with the knowledge of the respondent; and the case rested on the evidence given by the witnesses hereinafter named, and the counter statement of Thomas Murray, the brother and general agent of the respondent at the election in question.

The petitioner's counsel also relied upon the evidence given by other witnesses, not for the purpose of proving any substantive charge in respect of the matter relating to them, but for the purpose of giving effect to the charges relied upon as connected with the persons before mentioned, and as showing the general course of conduct pursued by the agent Thomas Murray throughout the election.

I shall take up the charges seriatim and dispose of them.

And here it may be proper to observe that they are all based upon offers or promises, not upon any act of or thing performed by Thomas Murray, the general agent of the respondent. And while admitting the general circumstances and much of the narrative, and in the very words of each one of the witnesses in his account of the particular transactions which he relates, Thomas Murray gives a different color to the language and a different turn to the expressions which were used, which quite alter the meaning of the conversations detailed by the witnesses, and so constitute in effect a complete or substantial denial of the character of the charges attempted to be proved against him. He also, however, in many respects directly contradicts the witnesses.

If I were to act upon his opposing testimony in all nine cases in like manner as I might probably do if there were a separate opposing witness in each case to the testimony

of the witness who supports each charge for the petitioner, I might feel justified, and, all other things being equal, I might be obliged, to treat the case proved as answered and repelled by the counter evidence.

But I cannot give the like effect to the testimony of the same witness in each of the nine cases as I should, as a general rule, be required to give if there were a different witness in each case, when he, the only opposing witness, is confronted by the adverse testimony of nine persons, who, although they do not corroborate one another by speaking to the same matter, agree in this that they each and all of them contradict in material matters this one witness.

The contradiction by many persons, each speaking of a separate matter, of a single witness, who testifies as to the whole of these transactions, must naturally shake if not destroy the confidence which might be placed in that witness if he were opposed by the testimony of only one or two witnesses, speaking either of the same or of separate transactions.

The word of only one witness can hardly be held to counterbalance the testimony of many witnesses, and he be held to be alone right or truthful, and the cloud of witnesses who are against him be all deemed to be wrong, although each one of these opposing witnesses speaks only to an independent fact or circumstance not spoken to by any of the others.

If an action were brought to recover the amount of six promissory notes, and the defendant pleaded a denial of the making to the first note ; that he was an accommodation party to the second ; the plea of payment to the third ; that he was discharged by the plaintiff as to the fourth ; that there was a failure of consideration as to the fifth ; and that there was fraud as to the sixth. And if his single testimony in maintenance of his respective defences were met by a single and different witness to each matter against it, it would be hard to say that the array of witnesses against him on these different

matters was entitled to no more consideration than if only one of such defences were on trial, and the plaintiff's sole witness was opposed by the defendant's sole testimony.

It is impossible to avoid seeing and feeling that the more frequently a witness is contradicted by others, although each opposing witness contradicts him on a separate point, the more is our confidence in that single witness affected, until at length, by the number of contradicting witnesses, we may be induced in effect to disbelieve him altogether.

It is difficult to believe that so many are wrong; it is easier to believe that one is wrong so many times; and the more there are who speak against him, the more we are led to believe that he is the one who is in the wrong. I stated this generally during and at the close of the argument of counsel on the trial, and I feel it right to state it again as governing me very much, perhaps I may say altogether, in deciding upon the evidence.

I do not say from this that when a witness has been contradicted by five or six credible witnesses on so many different points, that I must then believe anything which others, however extravagant or idle, may say against him.

I must, notwithstanding that state of things, first of all determine whether the story told by the witness in the first instance is reasonable or probable in itself, and if it be not, I should disregard the story, and so I should not be called upon to weigh what was said against it.

If as against six different witnesses speaking each to a single fact, I believed three of them against the one, and believed the one as against the other three, I should feel a difficulty in determining how far to treat the one as discredited by the first three, when his veracity had been strengthened by the belief accorded to him as against the second three.

The question of veracity does not depend only upon the strength of numbers, nor in some cases does it so at all.

Its true basis is character. It is upon the quality of the evidence, and the point is to determine that quality. And I should still have to consider the whole case both for and against the one witness before I could say whether I ought to believe him or disbelieve him as to the remaining three.

I submit these general observations at the outset, in order that I may apply them in such a manner as I shall have to deal with the evidence upon each charge as I take it up.

1. The first case is that which rests upon the transaction which took place with Alexander Bell. The facts stated were, that at a previous election, when Thomas Murray was a candidate, William Murray, the present respondent, employed one John Robinson to canvass Bell, and to hire him to work at \$20 a month. Bell voted then for Thomas Murray, and after the election he went with his clothes to go to work for William Murray, who would not employ him, and he had to hire with some one else at \$15 a month, and he lost, as he believed, the difference of \$5 a month.

It appears that Thomas Murray did ask Bell to sign the requisition of the respondent, and, it may be, to vote for him also. Bell refused to do either one or the other in very plain terms. He said he had voted for White before, and he would do it again.

Bell said that Thomas Murray said to him, "Come with us this time, and I'll make it all right, or try to make it all right!" He is very positive of it. Thomas Murray denies very strongly having said that or anything like it. He says, "I said to Bell that, apart from elections and politics, we wished to sustain our name as business men, and if I could get Bell and my brother face to face, and if any injustice was done I would have it rectified, and that Bell should not let these matters interfere with politics anyway."

Matters standing in that way between the two principal parties, the evidence of John Robinson has to be considered. He says that Thomas Murray said, "If Bell had

been at a loss by his brother *previous to election matters*, he, Thomas, would make it all right, or try to make it all right; I mean by *previous to election matters*, that Thomas was referring to *business matters*."

No doubt he was referring to business matters; but the question is, was he referring to them in connection with the election contest then going on, and for the purpose of influencing Bell's vote? Bell said he was; Thomas Murray said he was not; Robinson is not very clear either way on the above statement. But he also said that Bell said he had lost \$15 or \$18 by the contract not being carried out, and that Thomas answered just as Bell had said, "he, Bell, had better come with us this time, and he, Thomas Murray, would make it all right, or try to make it all right!" which latter statement was expressly in connection with the then election proceedings.

The weight of evidence is, I think, rather with the petitioner than with the respondent; and if it were the only charge, it might be capable of being viewed somewhat differently than when it is one of a greater number, and all or many of which are supported by the evidence of the persons called to prove them, while they are explained or repelled by Thomas Murray in the like manner in which he has referred to this particular charge.

If effect has to be given to this charge, it must be felt to be exceedingly hard upon the respondent, for all that took place, even as Bell represents it, had not the slightest effect upon his vote. He refused from the first to support the respondent, and he declared he meant to vote for the petitioner. He declared also that he desired nothing in any form. He never accepted the offer or promise he says was made to him, and he declared at the time he would not and did not do so.

If, however, the *offer* of any valuable consideration is, as it is expressly declared to be, bribery by the 37th Vic., cap. 9, sec. 92, subsec. 1, it is not for the Court or Judge to interfere with the enactment otherwise than to give it effect when the penalty attaches.

2. The second charge relates to Augustus Mohns. He said Thomas Murray, about two weeks before the polling day, met him in Pembroke. He said witness had a good vote. He asked me who I was going to vote for; I said, nobody; he said, I had to vote. He asked who I voted for the last time; I said, Mr. Murray. He said, I would have to vote for him again. I said, no; I lost time every year. He said, he would come good for my time. The promise made to me by Mr. Murray did not induce me to go to vote.

Thomas Murray, for the defence, said as to the charge, "I asked Mohns for his name on my brother's requisition. He first declined; he did not want to lose his time in going to elections. I said, his time would not be lost; it was his duty to go. I explained to him my brother was the proper man to support; he was the Government candidate; and going to vote would be a day well spent. I said nothing to him of making good his time to him; I thought of nothing of the kind."

I have no reason to doubt the statement of the witness Mohns. He had no object in fabricating a story. The strong interest of Thomas Murray for the respondent's cause would induce him to go as far as he thought he safely could go in talking with the electors; and for that interest he might go further than he had intended to go, or thought he had gone in his conversations with them. I decide this charge solely by reason of the weight which the evidence of Mohns acquires from the concurrence, as it were, of that of the other witnesses, from their testimony being all adverse to that which was given by Thomas Murray.

3. The third charge is that relating to Robert Pollock. His case is that when Thomas Murray, Mr. Stone and Mr. Jackson, called upon him lately before the last election, "Thomas Murray asked me for my vote. I had not supported Mr. Murray before that. He asked me to support his brother. I called him to one side and I told him my objections. I said I was hard up then, and the

man that would oblige me I would oblige him. I went on to tell him of some matters, and I mentioned money, and he said, don't mention about money, the law is strict. As he was coming away he said to me, 'If I don't, call me no gentleman; and I would not that for half your farm.' No one else was present at the conversation. . . . Murray and I then went to the front part of the house where Stone and Jackson were, and Murray said to them, 'I think Mr. Pollock is all right,' or 'Mr. Pollock is going to give my brother his support or vote.' . . . It comes to my memory now that after I had said to him that I would oblige him who would oblige me, he said, 'Wait till after the election.' . . . I did not see Mr. Murray after that till the following day at the polling place in Westmeath. He asked me then if I was going to vote for his brother. I think I told him I was all right. I referred that day to our former conversation by saying 'it was all right.' . . . After the election I asked Thomas Murray if he could lend me a little money, and I would pay him interest on it. He said he had no money. He said, 'I think I gave you to understand I did not or could not promise you money on account of voting.' He said he had bought a lot of cattle, and he had not money to pay for them. I said I would give him any interest he asked." And he said he was influenced by what passed between him and Thomas Murray before the election, for "the impression made on my mind by our conversation was that he would oblige me after the election." I cannot say I was influenced by what he said the impression made on his mind was.

In cross-examination he said: "He, Thomas Murray, asked me for my vote while Stone and Jackson were by. I asked him to go apart." He recapitulated his evidence in chief.

Thomas Murray's account of the matter was as follows: "I said to Pollock I was going about getting names on my brother's requisition; that I supposed he knew my brother was a candidate. He said he did not know. He

would be likely to be friendly to those who would be friendly with him ; that he said in presence of the other two. I said, I don't know what you exactly mean. If you mean I should hold out any inducements to you to get your vote, I wish you to understand I do not do so. I want to conduct this election on legal grounds. Stone and Jackson said to Pollock he had better give me his name for my brother ; that he was the Government candidate. Pollock then called me away from the others a little way. He made the same remark again to me. I said, I had already told him my mind upon it. He began to tell me his troubles and difficulties. I said, I did not want to hear them. He said he would like to borrow money. I said, Don't mention money ; I did not want him to do it. He got excited. I pressed him to support my brother, and that he had better give me his name, as Stone and Jackson, and others of his neighbors, had done or would do. He said, Well, he did not know but he would give me his name ; that I had the name of being a gentleman, anyway. That is all that was said. I did not say anything of the law being strict about money ; I think Jackson said it to him. I said nothing to him of 'call me no gentleman;' nor did I say to him, 'If I don't, call me no gentleman.' I said nothing to him of 'half his farm' or of the whole of his farm. Nothing was then said of anything being done after the election. I did not say to him to wait till after the election. I saw him on the polling day. Did not speak to him on that day. I saw him about a month or so after the election in my store. He wanted me to lend him \$100 or so. I said I had no money to lend ; we required it all for our business. He said he did not know but I might lend him the money after the election. I said I did not give him to understand I would do so, and he must know it ; and he said, Yes, he did know it. He said, Could he not get it from the other party ? I said I did not know. The general impression was he voted the White ticket, anyway. He was annoyed. I did not give him to understand in any-

way, in any conversation with him, I would do anything for him in connection with the election; on the contrary, I tried to evade it."

In cross examination he maintained his original statement. He added he would not believe Pollock on his oath.

In this matter it was observed upon by the petitioner's counsel that Stone and Jackson, who were present, according to the evidence of Thomas Murray, at a good deal of the conversation spoken of by Pollock, had not been called as witnesses by the respondent. It is a fair subject of comment. If, however, they had been called, they could only have spoken to the earlier part of the conversation. It would certainly have been important to have had their testimony.

Here again is another witness opposed to the same witness for the respondent, and there is no reason to disbelieve him, especially, when it is of the same nature as that spoken to by the other witnesses on the other charges.

4. The fourth charge relates to Martin Melchar. All that took place, as he says, with him was that which happened on the polling day, when Thomas Murray asked him for his vote and if he were going to work on his side. The witness then said, "He, Murray, did not promise me anything. He said if I worked on his side or voted on his side, to go after the election was over to see him. I went to him after the election. He said I had not voted for him. I thought I was to get something. I thought I could go when I liked. I told him I had worked for him. He said I had not worked for him. He told me that right off on the street when I saw him."

The matter is not wholly free from some slight suspicion, but it is all so indefinite that it cannot be safely said there was a promise implied; there was certainly no express promise to do anything for the witness after the election. "Going after the election was over to see him" does not necessarily mean that he was to go for a corrupt purpose; it may or may not be so. It is a matter of fact

and of inference, and I think I ought not to infer it from the facts stated.

5. The fifth charge was spoken to by Antoine Rossorski. As to this charge, it is not disputed that Thomas Murray had a bet of \$400 on the result of the Wilberforce poll, as before stated. Haase and Rossorski both say that Thomas Murray mentioned to them that he had a bet of \$500 on the election. Thomas Murray denies having mentioned it to either of them. Rossorski says also that Thomas Murray told him he held such a bet, and he, Rossorski, could get some of it when he voted for the respondent, and Rossorski said, "That will do."

Haase says that Thomas Murray, on the same occasion, said to him, he, Murray, had such a bet, and he said, "I'll give you——," when he was called away and did not finish his conversation with him, but began talking with Ashmore of betting the \$500 with him.

I think Rossorski's character is not so impeached by the evidence given against him by the Rev. Mr. Jenkyns that I must disbelieve him, considering the evidence in his favor given by Leach and Ashmore. I think also that the evidence of Haase shows a strong probability of Rossorski's account being a true one, for very nearly the same thing was, it may be inferred, being about said to Haase which it is said was said to Rossorski.

Rossorski has shown a very strong desire to unseat the respondent, and therefore his conduct and evidence must be very carefully considered, for he is plainly both an adverse witness and an adverse political partizan.

Thomas Murray also appears, with respect to the particular poll at which Rossorski was a voter, to have had an interest of a pecuniary nature of not the most satisfactory kind, considering the deep personal interest he had in the contest on behalf of his brother as well as of his party. The bet was that White would not have a greater majority at that poll than 15, while it turned out he had 20. While the voting was so close in that township, it was the interest of Thomas Murray, with a bet of \$400

on the result of it, to expend some part of it by the acquisition of a few voters in order to gain the much larger part of it remaining.

And when to that are superadded the natural desire to win the bet just for the sake of winning it, although no money is dependent upon it, and the natural desire to carry the election successfully all over, which was secured by a further bet of \$400, it appears, I think, the probabilities of the case are quite in agreement with the positive testimony of Rossorski, and which is corroborated in part by the evidence of Haase. This charge, I think, I must find to be sustained.

6. The sixth charge refers to the dealing with John Schultz. Here again there is a direct contradiction between the two witnesses. The one, Schultz, swears he was to have \$22 for the cow if he voted for the respondent; the other, Murray, that the \$22 was given upon Schultz's agreeing to drive the cow back to Murray's pasture if she broke from it and went back to Schultz's place. It must be admitted the consideration or inducement was one of a small amount. It is useless trying to reconcile the two statements. I should perhaps, as I have already said of the other charges decide this against the petitioner if this were the only charge, but as it is one of a series of charges, each one of which is supported by a different witness, I do not know what I can do even in so small, I may say so trivial a matter, unless I give effect to the accumulated weight of testimony, when I have no reason whatever to doubt the truth of the respective witnesses who maintain these charges.

7. The seventh charge is the one in connection with Andrew Halliday. He said Thomas Murray asked him if he might put the witness's name upon his brother's requisition. The witness said, Yes, if the other pleased, and the witness then said, Thomas Murray said that generally they did not forget their friends. He did not say it would be all right, nor anything of money. I do not attach any weight to this charge, even as it is stated, and besides, Thomas Murray denies it.

8. The eighth charge relates to the dealing with John Douglas. Here again the story is of the like character against Thomas Murray, an offer or promise made in the like indirect manner as in the other cases, and spoken to by a man and in a manner which caused no suspicion of the truthfulness of the transaction he spoke of.

Thomas Murray admits he tried to get Douglas's vote for his brother, and that they did talk aside for some time, and that Douglas did speak of \$40 or \$50 being due by him to some of White's people, and that he was afraid to act on Murray's side partly in consequence of it. He admits also that he said \$40 or \$50 was not a killing affair anyway, and that by the ballot the way of the voting would not be known, and that he did say at the second conversation, "Mr. Douglas, you know me well enough to know that I would not like to see any man injured." He denies any promise or offer made, or inducement held out, or stronger or different language having been used than he has mentioned, but he says he may possibly have said if Douglas voted for his brother, he, Douglas, would not be sorry.

Now, Douglas's story, in a few words, is that Thomas Murray said, after a good deal of solicitation on Murray's part for Douglas's vote, and after Douglas had told his wants, position and expectations, "If you vote for my brother you will not be sorry for it, and I will do the square thing with you;" and that he said so very soon after having said, as Douglas stated, "Hang it, \$40 is not much." A very little more than Murray has admitted would convert his story into Douglas's account of the transaction. But as they each stand, there is evidence from which an offence may be inferred in the one statement but not in the other. And the question is, which of the two accounts am I to act upon? As I have already said, I think, as I do not disbelieve Douglas, the probabilities for what has been before said oblige me to accept of his narrative, although, as I have said more than once, were that the only charge made, I should not consider it to

be substantiated against the contradiction given to it by Thomas Murray.

9. The ninth charge relates to the sale of oats by John Luck, Jr. He said that Mr. Foley, the respondent's assistant bookkeeper, told him the price of oats was 40c. a bushel, but he would give the witness 43c. if he would vote for Mr. Murray, and Luck answered he was not selling his vote, but if he, Foley, would give the 43c. a bushel, he, Luck, would take him at his word, and that the oats were sold accordingly; Foley telling Luck not to tell the other clerk who weighed the oats what price he was getting. Luck had 5 or 6 bags of oats. Foley denied this statement. He said Luck asked 45c. a bushel, and he split the difference with him, and gave him 42½c. It is not clear that there is any agency proved on the part of Foley to bargain in the manner represented, although there was a requisition in favor of the respondent left on the counter, and those in the shop were to ask persons to sign it. But if there were, Foley's denial is entitled to as much credit as Luck's assertion; and the transaction, altogether perhaps about 15 bushels oats, at 3c. per bushel extra would only be 45c., does not induce one to lay any great stress upon it.

It is true that farmers and others are very particular and pertinacious about the highest cent for their produce or articles of sale, and that a very small advance of price may operate as a sufficient inducement to some persons, even on a small quantity of anything, to consider how they should vote at an election, or to change their vote, or to make a promise to vote. And the smallness of the transaction is not a reason for disbelieving the whole story. And if the story be proved the charge is maintained, and the offence is just as complete as if the inducement, in place of being a small one, had been a large one. I consider, as to this charge, that Mr. Foley's evidence has satisfactorily answered it.

There were many other charges attempted to be proved,

which failed ; and the evidence was very long. The case must depend upon those already referred to.

I am obliged, from the conclusion I have come to, to give effect to the prayer of the petitioner. And I shall certify, also, that no corrupt practice has been committed, according to the evidence, by or with the knowledge and consent of any candidate at the said election ; that Thomas Murray, the agent of the respondent, has been proved at the trial to have been guilty of corrupt practices, for and in respect of and towards the six persons ; that I have found these charges laid against the respondent have been proved ; and that corrupt practices have not extensively prevailed at the said election.

The costs of the proceedings will follow the result. The petitioner will receive from the respondent the costs of those charges on which he has succeeded ; and he will pay to the respondent the costs of those charges on which he has failed.

If this election fail, it is only from the strictness, perhaps from the severity and harshness, of the provisions of the Election Law. I have no doubt that the offers and promises I have been compelled judicially to act upon, had not, assuming them all to have been made, the slightest effect upon any one of the votes or voters, with respect to which and to whom the offers or promises are said to have been made. And undoubtedly they had no effect upon the general result of the election, which was, with the exception of these mere offers, conducted, so far as I have been able to discover, upon both sides with general purity, and upon the whole, I think, with a desire to conform to and keep the law. If relief be given it must come from the Legislature ; I can only do what I am obliged to do, which in many cases is as painful to the personal feelings of the Judge, apart from the consideration as to which side in politics the respondent may be upon, as any duty which could possibly be imposed upon him.*

* The judgment in this case was not approved by the Court of Appeal in the *Muskoka case*, *ante* pp. 458 and 474.

The petitioner appealed from this judgment to the Court of Queen's Bench ; but the Court held that as the learned Judge had found that corrupt practices had been committed by an agent of the respondent, the appeal should be dismissed.

(10 *Commons Journal*, 1876, p. 21).

MONCK.

BEFORE MR. VICE-CHANCELLOR BLAKE.

TORONTO, 8th, 10th and 17th January, 1876.

PETER GRANT *et al.*, *Petitioners*, v. LACHLIN MCCALLUM,
Respondent.

Ballots—Scrutiny—37 Vic., cap. 9, ss. 28, 45, 80.—Effect of neglect of duty by a deputy returning officer.—Marking ballot paper.

The neglect or irregularities of a deputy returning officer in his duties under the Dominion Elections Act, 1874, will not invalidate an election, unless they have affected the result of the election or caused some substantial injustice.

Held, therefore, that the neglect of a deputy returning officer to initial the ballot papers, and to provide pen and ink instead of a pencil to mark them, would not avoid the election.

The following irregularities in the mode of marking ballot papers, *held* to be fatal :

1. Making a single stroke instead of a cross.
2. Any mark which contains in itself a means of identifying the voter, such as his initials or some mark known as being one used by him.
3. Crosses made at left of name, or not to the right of the name.
4. Two single strokes not crossing.

The following irregularities *held* not to be fatal :

1. An irregular mark in the figure of a cross, so long as it does not lose the form of a cross.
2. A cross not in the proper compartment of the ballot paper, but still to the right of the candidate's name.
3. A cross with a line before it.
4. A cross rightly placed, with two additional crosses, one across the other candidate's name, and the other to the left.
5. A cross in the right place on the back of the ballot paper.
6. A double cross or two crosses.
7. Ballot paper inadvertently torn.
8. Inadvertent marks in addition to the cross.
9. Cross made with pen and ink instead of a pencil.

The election held on the 29th January, 1874, having been avoided (10 *Commons Journal*, 1876, p. 6.), a new election was held, at which the respondent and Mr. James

D. Edgar were candidates. The respondent was declared elected by a majority of four votes over Mr. Edgar. A petition was then filed, claiming the seat for the latter, on a scrutiny of the ballots.

Mr. Hodgins, Q.C., and Mr. Edgar, for petitioner.

Mr. McCarthy, Q.C., and Mr. F. Osler, for respondent.

The objections taken to the ballots appear in the judgment.

BLAKE, V.C.—The parties did not desire that I should state a case for the opinion of the full Court in respect of the matters raised, which seemed to me to involve questions that it would have been well to have had settled by the Court on a rehearing. I proceed, therefore, at once to dispose of the petition, so as to enable the party dissatisfied, if he pleases, to appeal the case during the coming month.

The considerations applicable to two of the questions raised appear to me to differ from those which should regulate the disposition of the other points discussed. I refer to those irregularities which arose from the acts of the deputy returning officers—the one, the use by the electors, in some instances, of pen and ink, supplied by this officer in place of a pencil; the other, the use of ballot papers in the election not marked by the deputy returning officer, as contemplated by the Act.

The duty cast upon this officer is clearly defined by the statute. The 2nd clause in the “Directions for the guidance of electors in voting,” in Schedule I, is as follows: “The voter will go into one of the compartments, and with a pencil there provided place a cross opposite the name or names of the candidate, or candidates, for whom he votes, thus ×;” and subsection 4 of section 28 enacts that the returning officer is to furnish each deputy returning officer “with the necessary materials for voters to mark their ballot papers.” The latter portion of section 43 deals with the other point: Each elector “shall

receive from the deputy returning officer a ballot paper on which such deputy returning officer shall have previously put his initials." It is to be regretted that these officers, by their culpable neglect in omitting to observe these plain and simple rules, should cause the difficulties which have arisen in the present case. Having undertaken these duties, they should have fulfilled them with intelligence, care and honesty, and they may be deservedly censured for involving the candidates in the difficulties and expense connected with the present scrutiny. It does not better their position that possibly their irregularities and mistakes may be covered by a healing clause in the Act. Section 80 makes the following provision: "No election shall be declared invalid by reason of a non-compliance with the rules contained in this Act as to the taking of the poll . . . or of any mistake in the use of the forms contained in the schedules to this Act, if it appears to the tribunal having cognizance of the question that the election was conducted in accordance with the principles laid down in this Act, and that such non-compliance or mistake did not affect the result of the election." The principles laid down by the Act seem to be secrecy in voting, and the removal of difficulties in the way of an elector exercising his franchise.

There seems to be no doubt that the election in question was conducted in accordance with these principles. It cannot be said that the irregularities complained of affected or bore upon the result of the election, nor were they calculated to do so. It was not even argued that any injury of the kind has here arisen—that any other than the provided ballot papers had been used, or that the vote of any one not entitled to vote had been received. The neglect of the officer should not be visited on the elector or candidate, unless it is apparent that it has or might have caused some substantial injustice. Of the 132 votes cast in Pelham division, No. 1, it is said 130 are open to the objection that the ballot papers were not initialed by the deputy returning officer. I do not

think I should lightly disfranchise so large a body of the electors, nor should I lightly say the irregularity is of such a nature as to disfranchise, and this disfranchisement being so general, the whole matter must be set at large and a new election ordered.

I am of opinion that, under this clause, irregularities of the nature here relied upon in order to invalidate the election must be substantial and not mere informalities; that the informality must be of such a nature as that it may reasonably be said to have a tendency to produce a substantial effect upon the election. I do not think the irregularities here complained of in any manner interfered with the election being a real one, nor did they in any manner affect the result, and therefore they cannot be raised as grounds for avoiding it. This view is corroborated by the finding in the *Huckney case* (31 L. T. N. S. 72). There Mr. Justice Grove says: "An election is not to be upset for an informality or for triviality. It is not to be upset because the clock at one of the polling booths was five minutes too late, or because some of the voting papers were not delivered in a proper manner, or were not marked in a proper way. The objection must be something substantial, something calculated to affect the result of the election."

It must also be borne in mind that if the Court lightly interferes with elections on account of errors of the officers employed in their conduct, a very large power may thus be placed in the hands of these men. That which arises from carelessness to-day may be from a corrupt motive to-morrow, and thus the officer is enabled, by some trivial act or omission, to serve some sinister purpose, and have an election avoided, and at the same time to run but little chance of the fraudulent intent being proved against him. I therefore disallow the objections taken to votes given by means of ballot papers marked with the pen and ink provided in the polling booth, and to those given on the ballot papers provided by the returning officer but not initialed by him.

There were three other points argued before me : 1. What mark sufficiently expresses the intention of the elector as to his voting? 2. Where must this mark be placed? 3. What additional mark warrants the rejection of the ballot paper? The following portions of section 45 and of Schedule I. deal with the first two of these questions: "The elector . . . shall . . . mark his ballot paper, making a cross on the right-hand side, opposite the name of the candidate . . . for whom he intends to vote." "The voter will . . . place a cross opposite the name . . . of the candidate . . . for whom he votes, thus X." It is also to be noted that in the form given the cross is not exactly opposite the word "Roe," or the words "Richard Roe," but appears as follows :

II.	ROE. RICHARD ROE, Town of Prescott, County of Grenville, Merchant.	X
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I think that every reasonable latitude that can be given to an elector as to the form or position of his mark, without a direct evasion of the statute, should be given to him. The Act, however, requires that this mark should be a cross, and it also requires that this cross should be on the right-hand side, opposite the name of the candidate. I cannot say, therefore, that, so far as the mark is concerned, the elector has complied with the Act when in its place he puts a single line. I must rather conclude that the elector, for some purpose, desired to go merely through the form of voting, and expressed this intention by placing such a mark there as evidenced his design of not complying with the requirements necessary to allow his ballot to be counted for either of the candidates. The single stroke does not show a concluded intention of voting, for only a portion of that which is the defined figure is thus made. The voter is told that if he puts a cross in a particular place, which is well defined on his

ballot paper, his vote will be accepted ; if he does not choose to do that, he loses his vote. It may be that at first this rule will work hardly ; but soon a matter so easily comprehended will be perfectly known throughout the country. In the meantime, the price paid for obtaining secrecy in voting will be the virtual disfranchisement of a small proportion of voters who have not learned how to vote under the present system.

Until the mark loses entirely the figure of a cross, I think it should be allowed. It may be imperfectly made ; there may be additions to it from nervousness, or awkwardness, or by way of embellishment. There may be several lines crossing another line or other lines ; the one line may lie upon the other at any angle ; the one line may cross the other but a short distance ; yet so long as it is possible to say the figure can be taken as that of a cross, it would be the duty of the Court to say the intention of the elector is sufficiently defined to allow his ballot to stand. As with the form of the cross, so with its position. I do not think it necessary that it should be exactly opposite either the word "Roe" or "Richard Roe." It may be above or below a line produced from the end parallel with the end of the ballot-paper. It need not be in the compartment in front of the name, but the moment it ceases to be on the right-hand side, then it is no longer in the place which indicates an intention of voting, and therefore must be rejected. If it be correct that the form of the mark, such as a line or circle, vitiates the ballot, I do not think it unreasonable to say that the position of the mark may have the same effect. A man who pretends to vote puts a stroke and nothing more, and knows his ballot paper will be rejected ; a man who does not want in reality to vote may just as well say, "I will place my mark or cross to the left of the name and thus, though apparently voting, vitiate my ballot paper." I think it is safer, in a case where the wording is so plain as here, to require a reasonable compliance with that which it lays down as being the requirements

of a ballot paper which is to be accepted, rather than enter into a minute examination of the position of each cross, and endeavor to assign some reason in each case for that which virtually is an evasion of the plain language of the Act.

The third point raised depends on the true construction of section 55 and Schedule I.:

The returning officer shall reject all ballot papers "upon which there is any writing or mark by which the voter could be identified." "If the voter places any mark on the ballot paper or envelope by which he can afterwards be identified, his vote will be void and will not be counted." The marks found on the ballot papers are: (a) Additions or embellishments to the figure intended to represent the cross, and by which such figures might be distinguished from other crosses. (b) Marks made inadvertently near the cross, and which have arisen evidently from nervousness or awkwardness. (c) Distinct lines or figures made in various places on the ballot paper.

The Act does not say any mark, or any mark deliberately made, but a writing or mark by which the voter could be identified. I think the mark must contain in itself a means of identification of the voter in order to vitiate the ballot. There must be something in the mark itself, such as the initials, or some mark known as being one the voter is in the habit of using. If there be not this restriction, then it will naturally follow that every peculiarity about every cross should be scanned in order to see whether some of the additions were not put there designedly so as to mark distinctively that particular ballot paper. Any mark in addition to the cross might thus avoid the vote; and, on the same principle, any alteration in the position of the cross from a rigid observance of what is set forth in the Act should be taken as a means of denoting the ballot as one marked so as to require its rejection. I think if the Legislature intended this result we should have found different language used from that which we have in this enactment.

I proceed on the above rules to scrutinize the votes objected to on both sides. The petitioner had 1,329 votes and the respondent 1,333, leaving a majority of four votes for the respondent.

In Canboro', No. 1, there were four ballots for Mr. Edgar rejected, which rejection is objected to. This affords a fair example of the necessity of observing with exactness the rules prescribed by the Act. The deputy returning officer here employed pen and ink. The crosses in these four cases were distinctly made opposite the name Edgar, and in the proper position on the ballot paper. The voter folded the paper down at once, and accurately, which made an impression opposite the name McCallum. We have by this means a cross opposite the name Edgar, and another cross identical in form opposite the name McCallum. On a close inspection it is apparent that the upper cross is the original one, and that the lower, or McCallum one, is caused merely by the paper being brought into contact with the mark, the ink of which was not dry. These four votes should therefore be allowed to Edgar.

Caistor, No. 1.—There was a cross to the left of the name properly rejected.

Dunnnville, No. 1.—There were four votes rejected for Edgar. One was improperly rejected, the mark being a cross to the right hand and opposite the name. Two were crosses to the left of the name, one being simply a stroke with a pen through the figure "1" of the year "1875," which appears on the ballot paper to the left of the name, and the fourth was a single stroke. These three were properly rejected.

Moulton and Sherbrooke, No. 1.—There was a miscount. The numbers returned were thirteen for Edgar and one hundred and fifteen for McCallum, whereas it should have been twelve for Edgar and one hundred and sixteen for McCallum.

Wainfleet, No. 1.—There were four rejected for McCallum, one of which I allow, being a well defined cross with a line running through its centre.

Wainfleet, No. 2.—There were two rejected for McCallum; one properly, as being a cross to the left of the name; the other improperly, there being a well defined cross opposite “McCallum,” and a single stroke opposite “Edgar.”

So that up to this point there should be added to the number of votes polled for Edgar, as being improperly rejected, five, and there should be deducted for the miscount, one; leaving the total addition to be made four, and thus giving the number of votes polled for him thirteen hundred and thirty-three; and there should be added to the number of votes polled for McCallum, as being improperly rejected, two, and for the miscount, one; thus making the number of votes polled for him thirteen hundred and thirty-six.

Of the votes allowed by the returning officer, I find the following:

Caistor, No. 1.—An inadvertent pencil mark, allowed; a ballot paper inadvertently torn, allowed.

Caistor, No. 3.—One single stroke disallowed; one cross with a line before it, allowed.

Canboro', No. 1.—A ballot paper inadvertently torn, allowed; an inadvertent additional pencil mark, allowed; four marked with pen in place of pencil, allowed; two with single lines in place of crosses, disallowed; one ink cross blotted, allowed.

Canboro', No. 2.—One cross not to right hand of name, disallowed; one, not a cross—a circle with two lines underneath—disallowed; one with a cross in the proper place and a second cross erased, allowed.

Dunnville, No. 1.—A single stroke, disallowed; a double cross, allowed.

Dunnville, No. 2.—One single stroke, and one cross not to the right hand of the name, disallowed.

Gainsboro', No. 1.—One cross not to the right hand of the name, disallowed; one with a mark on the cross, allowed; two with single strokes, disallowed; two with

a cross to the left hand of the name, disallowed ; one ballot paper torn, allowed.

Gainsboro', No. 2.—One cross not to the right hand of name, disallowed ; a ballot paper inadvertently torn, allowed ; two with a cross not to the right hand of name, disallowed ; one ballot paper inadvertently torn, allowed ; one with a cross properly placed, but with an obliterated mark in the McCallum column, allowed.

Gainsboro', No. 3.—One single stroke, disallowed ; two single strokes, and two crosses not to the right hand of the name, disallowed.

Gainsboro', No. 4.—One ballot paper inadvertently torn, allowed ; one with an inadvertent mark under the cross, allowed.

Moulton and Sherbrooke, No. 1.—A cross on the back of a ballot paper for McCallum, allowed.*

Moulton and Sherbrooke, No. 2.—One with a single stroke, disallowed ; one with three crosses—the one in the proper compartment, the other across the name McCallum, and the third in the left compartment—allowed. These crosses were so placed, I think, because the voter was uncertain where the mark should appear. As there is a cross rightly placed, I do not think the vote should be rejected because of the additional crosses. One single stroke, disallowed.

Moulton and Sherbrooke, No. 3.—One single stroke, and two with crosses not to the right hand of the name, disallowed ; a fourth, with the cross to the right hand of the name in small letters, allowed ; two single strokes, disallowed.

Pelham, No. 1.—Two crosses opposite name, allowed ; an erased mark opposite Edgar's name, in addition to a cross opposite McCallum's name, allowed ; one single stroke, disallowed.

Pelham, No. 3.—One single stroke, disallowed.

* This decision was not followed in the *South Wentworth case*, ante p. 536. See also the *Berwick-upon-Tweed case* (3 O'M. & H. 182).

Wainfleet, No. 1.—Two with a cross not to the right hand of the name, and an additional mark, disallowed.

Wainfleet, No. 2.—Two single strokes and one cross not to the right hand of the name, disallowed; one single stroke, disallowed.

Wainfleet, No. 3.—One single stroke, disallowed; one with a second cross, allowed, it not appearing that the mark identifies the voter.

This disposes of all the objections made; and deducting the votes disallowed Edgar (19) from the votes allowed (1,333), would leave the number of votes polled for him 1,314; and deducting in like manner the votes disallowed McCallum (18) from the votes allowed him (1,336), would leave the number of votes polled for him 1,318. This would give him, as the result of the investigation, a majority of 4 votes, and he is therefore entitled to retain the seat.

I have therefore to declare that Mr. McCallum has been duly elected and returned, and I shall certify that to the Speaker.

(10 *Commons Journal*, 1876, p. 47).

HALTON.

BEFORE MR. JUSTICE PATTERSON.

MILTON, 10th to 12th November, 1875.

BEFORE THE COURT OF APPEAL.

TORONTO, 21st December, 1875, and 22nd January, 1876.

DAVID CROSS *et al.*, *Petitioners*, v. WILLIAM MCCRANEY,
Respondent.*Unsupported Offers of Bribery—Payment of Travelling Expenses—"Wilful"—"Corruptly"—Limited Agency—Agents—Appeal.*

A promise to work for a voter, made without reference to the election and as a joke, not evidence of bribery.

A charge that the respondent promised to give a voter certain work to do if he voted for him, was disproved by the evidence of the respondent and another, and by the admissions of the voter, made to other parties.

One L., a voter, hired a horse and cutter on the day of the election, and with M., a scrutineer for the respondent, drove to the poll and voted. The day after the polling L. and M. returned to their homes, and on the way M. gave L. \$4 to pay for the horse and cutter.

Held, 1. That the payment of \$4 having been made after the election, and not having been made corruptly to influence the voter to vote for the respondent, was not a corrupt practice or a wilful violation of sec. 96 of 37 Vic., cap. 9.

2. That M's. agency was a limited one, and had ceased before the payment in question.

Semble, That the term "wilful," as used in sec. 98, cannot be construed in a narrower sense than the term "corruptly" in sec. 92, subsec. 1; and that the term "corruptly" does not mean wickedly, or immorally, or dishonestly, but doing that which the Legislature plainly meant to forbid;—as an act done by a man knowing that he is doing what is wrong, and doing it with an evil object.

A year before the election the respondent paid part of the charges of a lawyer retained by one O. to attend the revision of the assessment rolls. O. at the time of the election attended one of the respondent's meetings at which he stated that his own mind was not made up, but he urged that the respondent ought to have the support of the voters, he being a local man; and in three or four instances O. asked voters to vote for the respondent. The respondent and his friends distrusted O., and in no way recognized him as acting with them.

Held, That O. was not an agent of the respondent for the purposes of the election.

The evidence in support of the offer of a present, or something nice, to the wife of a voter to induce the voter to refrain from voting, showing that it had reference to a different election than the one in question, an amendment of the particulars was refused, and the charge dismissed.

The charge against the respondent and one B., of an offer of money to, and to procure an appointment as Justice of the Peace for, a voter in consideration of his voting for the respondent, was supported by the evidence of the voter, who showed bitter hostility to B.; but the charge was denied by the respondent. And the evidence showing

the statement to be improbable, and that the election contest was carried on by the respondent with a scrupulous and honest endeavor to avoid any violation of the law against corrupt practices, the charge was dismissed.

The former election for this constituency having been avoided(9 *Commons Journal*, 1875, p. 22), a new election was held, at which the respondent was elected. A petition against his election was then presented, containing the usual charges of corrupt practices.

Mr. Hector Cameron, Q.C., Mr. James Beaty, Q.C., and Mr. D. McGibbon, for petitioners.

Mr. Bethune and Mr. John Dewar for respondent.

The evidence affecting the election appears in the judgment.

PATTERSON, J.A.—The particulars in this case set out about one hundred charges of bribery by the respondent or his agents. Evidence has been given respecting forty of these charges. At the close of the evidence the counsel for the petitioners confined the charges to seven cases, and very properly did so, as the evidence given did not afford a shadow of support to the other thirty-three. The seven charges insisted on were the following, viz. :

1. Bribery of John Allison by John Ramsay, an agent of respondent, "promising to work for Allison without charge."
2. Bribery of John Fluelling by the respondent, "by promise of money, or receiving money for his vote, and promise of work or employment after polling day."
3. Bribery of John Lambert by John McLeod, an agent of respondent, "by promise to pay and payment of travelling expenses from Guelph to polling place."
4. Bribery of John Peake by Wm. Caldwell, an agent of respondent, "by promise of money."
5. Bribery of John H. Campbell by Dr. E. J. Ogden, an agent of respondent, "by promise of employment for himself and son, for his vote and influence."
6. Bribery of Nathan Roberts by the respondent, or by William Barber, his agent, "by promise of a present, or something nice," to Christina Robins, his wife, after election.
7. Bribery of Allan McDougall by the respondent,

“by promise of commission as Justice of the Peace ; also of money and check for money, and by threat to prevent his procurement of any office.” And bribery by William Barber, the agent of the respondent, “by promise of commission as Justice of the Peace ; also of money and check for money.”

I think the petitioners have failed to establish any of these charges.

The evidence in support of the Allison case is that of Allison himself, and is to the effect that he met Ramsay at a sawing bee ; that Ramsay talked about the elections in general, and about other parties to whom he was to give a day's sawing for the election ; on which Allison said he wished Ramsay would give him a day's sawing, and he would vote for the respondent ; and Ramsay said it was a bargain, and he would do so ; and that then Allison, after thinking of the matter for two or three minutes, said he would not take it. Allison is a farmer, owning one hundred and fifty acres of land. Ramsay was called for the respondent, and so was one Joshua Norrish, who had been at the bee. Their account is not in conflict with that given by Allison, as far as his statement goes ; and their account of what was said is, I am satisfied, the true one.

The facts were, that on the 19th of January, 1875, the day after the election for the Local House, at which Mr. Barber had been returned, a party of eight neighbors were at a sawing bee at the residence of a Mr. Marks. The eight persons there belonged, some to the Reform party and some to the Conservative. They were joking, “or talking nonsense,” as one witness says. about the Barber election, and Allison said, in what, I have no doubt, was mere good-natured banter, that Ramsay was sawing a day for Marks, and would be sawing a day for Kitchen, another of the party, and a day for others, because they voted on his side ; and Ramsay, carrying on the joke, said, “ Yes, and I will go and saw a day for you.” This was not said with reference to the then coming election

of the respondent; and it is impossible to believe either that it was said as anything but a mere joke at the time, or that Allison could have for a moment supposed that Ramsay had any idea of influencing his vote, or that his vote could be influenced by the offer of a day's sawing.

Fluelling lives in Oakville, and works at carpenter work wherever he gets a job. His evidence is, that about three weeks before the election he met the respondent on the street in Oakville, about one hundred and fifty yards from the respondent's office. That the respondent asked him if he was going to support him, and he told him he had not made up his mind what to do, when the respondent told him he would have a lot of work to do in the spring, and that if Fluelling would vote for him he would give him work to do; and that Fluelling then said he thought he would vote for him. He said also that he had not asked for the work, because he has had work to do. The respondent and his foreman, Mr. Conkrite, gave a very different account. Their evidence is, that after Fluelling had been asked by respondent in the street if he would help the respondent in the election, and said that he would see, or that he did not know, the respondent went to his office; that Fluelling asked the respondent if he had any work to do; that respondent, without giving any answer, went into the office and asked Conkrite if he had any work for Fluelling, and was answered that he had none that he could then set him at, but that if any turned up he would give him a job; and that the respondent expressly left him to deal with the foreman, and made him no promise, telling him he would do nothing about work because it was election times. I am satisfied that no such promise or offer was made in the street as Fluelling swears to; that the parties went into the office, and that the matter was talked of there, which Fluelling entirely conceals in his evidence; and that no promise or offer was made, either by the respondent or his foreman; but that all that was done was that the foreman did not give any work then, and did not do more than say that if

any turned up he might give Fluelling a job ; and that this was not to induce him to vote or to refrain from voting. The evidence of the respondent and Conkrite is entirely supported by evidence of another kind, which is itself supported by Fluelling's own evidence, viz., that when the respondent learned from the particulars delivered that this charge was made, he saw Fluelling himself, and had him also visited by Conkrite and by a Mr. Young, and questioned as to the charge, when Fluelling always, in the most emphatic manner, denied that any offer or promise had been made to him.

The facts touching the Lambert charge are, that Lambert lives in Guelph and has a vote in Stewarton. Mr. McMillan, a lawyer in Guelph, was employed to act as scrutineer for the respondent at the poll at Acton. Mr. McMillan asked Lambert to come down to the election if he could : and Lambert, who had intended to come down on some other matter, postponed his trip until the polling day. On the polling day, from obstruction of the railway by snow or some other reason, it became necessary to drive from Guelph to Acton in order to get there in time. Mr. McMillan and Mr. Lambert, who were to go together, went to different livery stables to try to find a horse and cutter—McMillan going to one place and Lambert going to another—and it happened that Lambert found one and hired it. They drove to Acton. The horse and cutter were left there. Lambert went by railway to Georgetown, and from that made his way to Stewarton, where he voted, and then made his way back to Acton. On the day after the election Lambert and McMillan returned with the horse and cutter from Acton to Guelph, and on the way McMillan gave Lambert \$4 to pay for the horse and cutter, and on his reaching Guelph he paid that money to the livery stable keeper. There had not been anything said before coming down as to who was to pay for the conveyance. In the respondent's return of election expenses is included a sum of \$18 paid to McMillan, but it is not shown that the respondent

knew anything of the payment to Lambert, or that that payment formed part of the \$18.

This charge is urged as a violation of sec. 96 of 37 Vic., cap. 9, as the payment of the travelling expenses of a voter, which by that section is declared an unlawful act, while sec. 98 declares that any wilful offence against sec. 96, amongst others, shall be a corrupt practice. I do not think the word "wilful," whatever may be its meaning in this section, can be construed in a narrower sense than the word "corruptly," in sec. 92, subsec. 1. A payment of money for the travelling expenses of a voter was held to be a payment in order to induce him to vote, in *Cooper v. Slade* (6 H. L. Cas. 746), and, under the circumstances in that case, was held to be a corrupt payment. The distinction between that case, where there appeared to be a promise to pay the expenses conditional on the voter voting for a particular candidate, and a case like the present, where there is no pretence of a contract, is pointed out by Mr. Justice Mellor in his judgment in the *Bolton case* (2 O'M. & H. 145). In *Cooper v. Slade*, Mr. Justice Willes, in his opinion, delivered in the House of Lords, says, that "corruptly," in the section in question, "does not mean wickedly or immorally or dishonestly, or anything of that sort, but with the object and intention of doing that which the Legislature plainly means to forbid." Martin, B. somewhat more fully defines the expression in the *Bradford case* (1 O'M. & H. 37, 39) as "an act done by a man knowing that he is doing what is wrong, and doing it with an evil object." The present charge, if established, would in my opinion be an offence under subsec. 1 of sec. 92, as well as under secs. 96 and 98. In each case I think the same rule of construction must apply, and that a payment made after the election would not be a corrupt practice, as a wilful violation of sec. 96, unless it would be corruptly made within the proper construction of sec. 92. And I am of opinion that the evidence entirely fails to attach this character to the payment of the \$4 by McMillan to Lambert. I am further of opinion that

McMillan was not the agent of the respondent in this matter. His only authority was to act as scrutineer at the Acton poll; and there is nothing from which any more extensive authority can be implied; and his agency had ceased before the payment in question.

The case of Campbell is a case of the grossest and most disgraceful violation of the intention and object of the enactments against corrupt practices. I should fail in my duty if I did not report the names of John H. Campbell and Dr. Ogden as having been proved at this trial to have been guilty of corrupt practices; and I trust that in the interest of public justice and morality, the penalties provided by the statute may be enforced against them. Dr. Ogden appears, from the evidence, to have occupied a position of respectability and influence, and Campbell appears also to have been in a respectable position, and to be of high standing as an Orangeman. According to Campbell's own evidence, he agreed with Dr. Ogden for a payment of \$100 to refrain from voting against the respondent. Two letters which he produced show further negotiations of a corrupt character, and the other evidence of Ogden's statements induces the belief that the payment of \$100 was, besides purchasing the vote of Campbell, or procuring him to refrain from voting, to procure his influence in affecting the votes of Orangemen with whom he had influence. It is clear, however, that Ogden was in no sense an agent for the respondent; the only communication shown between him and the respondent or his agents was his communication to Mr. Young of the bargain he had made with Campbell, when it was at once repudiated by Mr. Young on the part of the respondent. The only other acts relied on as showing agency were that, a year before the election, the respondent paid part of the charges of a lawyer whom Dr. Ogden had retained to attend the Court of Revision and County Judge on the revision of the assessment rolls; that the respondent once supported Dr. Ogden when he was a candidate at a municipal election; that at the first meeting held in Oakville for the

respondent as candidate for election in the late contest, Dr. Ogden was present, and being called on by some of those present, spoke to the meeting, professing that his own mind was not made up, but urging that as neither of the candidates was a Conservative, the respondent ought to have the support of the Oakville voters, as being a local man; and that in three or four instances Dr. Ogden asked voters to vote for the respondent; while, on the other hand, it appears that the respondent and his friends distrusted Dr. Ogden, and in no way recognized him as acting with them, though they were aware, or supposed, that he was on that occasion supporting their side rather than the opposite party, with whom he had acted before.

Peake swears that he was offered \$20 by William Caldwell to vote at both elections for the respondent and for Mr. Barber, or to stay away from the election. The evidence given by Mr. Caldwell and by Dr. Robinson leaves no room to doubt that nothing of the kind, which Peake swears to, took place, and that his story is a simple fabrication.

In support of the Robins charge, Mrs. Robins, the wife of Nathan Robins, gives evidence that the respondent and Mr. Barber came together to her house, and that there Mr. Barber said he would give her a nice present if she would get her husband to stay away from the election or to vote for Barber. Nathan Robins and his son gave evidence in corroboration of Mrs. Robins, and the whole statement is directly denied by Mr. Barber, whose evidence is supported by that of the respondent. There was nothing in the demeanor of Mrs. Robins or her manner of giving her evidence, either in chief or on cross-examination, to suggest the idea that she was not telling what she believed to be the truth. I was impressed very differently by both the husband and son, and their evidence very materially weakened the credence which, if they had not been examined, I should have been inclined to attach to the evidence of Mrs. Robins. If I had to decide merely on the weight of evidence as between the

Robins family and the respondent and Mr. Barber, I should find it difficult, if not impossible, to say that the petitioners had satisfied me that the charge was true. I should find in favor of the respondent, as I see no ground for attaching more weight to the evidence of Mrs. Robins than to that of Mr. Barber. The evidence, however, does not in any way support the charge; there is no evidence that Mrs. Robins was solicited at all in respect of the election now in question. The evidence of all the three, wife, husband and son, is that it was Mr. Barber's election alone that was spoken of by Mr. Barber to Mrs. Robins; and besides all this, the offer spoken of was an offer of valuable consideration to Mrs. Robins to induce her husband to refrain from voting, which is a distinct offence under section 92 of the statute, and is not the offence charged in the particulars. I was asked to allow an amendment of the particulars in this respect, but refused, as the evidence was not such as to establish any offence in respect of the election now in question, or to show that the ends of justice required that the amendment should be made.*

The McDougall charge comes before me in rather unusual circumstances. It appears that McDougall was keeping out of the way to avoid service of a subpoena, and all the efforts made had failed to reach him, or to discover where he was, until a late period of this trial. An application was made to me to postpone the trial after the other evidence for the petitioners had been given, to afford time to prosecute the search, and I granted the application so far as to allow this charge to stand until the respondent's evidence on the other charges had been given. At the last moment the petitioners succeeded in producing the witness. The evidence of McDougall was to the effect that the respondent had called at his house in December, 1874, and asked for his vote, when he told him he had promised to vote for his opponent, Mr. Chisholm, and that on that occasion McDougall had

* See *Halton case*, Provincial Elections, p. 283 *ante*.

mentioned a grievance which he had against Mr. Barber, because in a recent appointment of justices of the peace by the Ontario Government the school section in which McDougall lived had been overlooked, no one in that section having been included in the commission; and that the respondent excused Mr. Barber, and took the blame on himself, saying that he and others had made up the list of persons to be recommended for appointment in Robinson's hotel, and that list had been given to Mr. Barber; that on Saturday, 16th January, the respondent and Mr. Barber had called together at his house; that Mr. Barber had asked for his vote, to which he replied, that Mr. Barber must have considerable brass in his face to ask a vote from him or anyone else in the school section, when he had passed over the section in not giving it a magistrate. That then the respondent took him into a room, and said that he wanted his vote and his boys', saying that he understood that Mr. McDougall had considerable influence in the county, and that he wanted his vote, and wanted to know if he would not make an assignment to him and Mr. Barber of his rights, and the right of his family of the county. I understood, and was about to note the words as "the right of his family in the county," but the witness corrected me by saying *of* the county, or *off* the county. I am not sure which word he intended. The witness continued, that he told the respondent he could not do what he asked; that the respondent then again asked if he could not vote for him, when Mr. McDougall said, as he had before told him, that he had promised his vote to Mr. Chisholm, and would not break his word for fifty thousand dollars. That after this the respondent put his hand in his breast pocket, and appeared to be producing from his pocket a piece of paper, and said to McDougall, "I can fetch you now. I have one check left, and only one. I will give you that for the interest of you and your boys." To which Mr. McDougall replied, "Put up your damnable corruption." That the respondent then said that the

expression, "damnable corruption," was wicked ; to which the witness replied that he could prove by the Bible that anything that was corrupt was damnable, and that the respondent said, " You can." After these statements the witness seemed to think, and said more than once on being pressed, that there was nothing more of consequence that he could think of. He said also, that in the room the respondent had said that it was not Mr. Barber's fault about the magistrate matter ; that the Reeve had never sent up McDougall's name as a grand juror, and that the list was made up from the grand jurymen ; and that he had replied that it was no use telling him that, as on his former visit he had said it was his fault, and that he had himself made up the list. To which the respondent said that he had made up the list, and that it was the Reeve's fault in not sending it up. I note particularly that McDougall only mentioned at a late period in his evidence, and apparently as recollecting what had not been in his mind when he was giving his direct account of what took place in the room, the fact that the magistrate matter had been talked of, because from the whole evidence I am satisfied that it was the prominent if not the only topic talked of in the room, and this circumstance has a material effect on the view to be taken of the honesty of the evidence. I may now also mention that from McDougall's own evidence, as well as from that of the respondent and Mr. Barber, it is perfectly clear that McDougall was in no amiable humor that day with his visitors ; that he was or professed to be in a great hurry, and unable to give time to talk with them, and was in fact treating them with very scant courtesy or civility ; and that it is exceedingly improbable for these reasons, apart from others which I have to mention, that he should have spent the time, or talked in the manner stated by him.

So far the witness had only approached the charges in question in what he said about the check. Being still pressed as to whether there was not something more, and

after again saying he did not recollect anything more, he seemed suddenly to recollect something that had been forgotten, and exclaimed, "Oh, yes! there was something more in the room. He said he would telegraph to Toronto, and have me appointed a magistrate. I said if it was for the sake of voting, or to obtain a vote, I would not accept it; that I would not accept it in that way. He said if I did not comply with that way he would report me to the Government as being a bad character. I said if he did I would go in defence of my character."

The explanation given by the respondent is that he had called, as McDougall says, not in December, but within a week before the 10th January, and that then McDougall had excited his sympathy by the story of his grievances, going back to confederation, and telling how he had been treated by the Reform party. One complaint was that Mr. Barber had been chosen to run as local member and McDougall set aside, though he was qualified for the position. But the principal complaint seems to have been that in the recent commission of the peace five magistrates had been appointed in the next school section and none in his, while he was as competent as some of those who had been appointed. The respondent denies entirely what McDougall says as to his having taken the blame on himself, or having said that he made the lists, or having said anything about Robinson's hotel; and he says that in fact he had nothing to do with making the lists, further than, as Reeve of Oakville, he sent to Mr. Barber a list of names there. McDougall does not live in Oakville. The reason of the second visit to McDougall is stated by the respondent as having been solely to explain to McDougall how his name had been omitted, as the respondent had learned the reason from Mr. Barber, to whom he had mentioned the earlier interview; and the respondent states further, that McDougall was so exceedingly excited, and evinced such an antipathy to Mr. Barber, that he took him aside merely to endeavor to obtain an opportunity of being heard more coolly, and

that all that took place in the room was the giving of the explanation ; and he entirely denies the matters alleged in support of the present charges.

I cannot say that the evidence leaves on my mind the slightest impression of the truth of the charges made by McDougall. I should, if necessary, apply to the charges, as also to those respecting Robins and Peake, the caution which has been on other occasions urged as necessary in dealing with evidence of an unaccepted offer. But there does not exist, in my view, any necessity for resorting to that rule. I am satisfied from the whole evidence which I have heard that the contest was carried on by the respondent with a scrupulous and honest endeavor to avoid any violation of the law against corrupt practices. I regard it as improbable to so high a degree as to be incredible, except on the clearest testimony, that the respondent should have attempted what McDougall swears to ; and I find no difficulty in the conclusion that the evidence of McDougall is untrustworthy, when in addition to the circumstances to which I have already adverted, I bear in mind that he was animated by feelings of bitter personal hostility to Mr. Barber, whom he connected with the personal slights and wrongs, real or fancied, under which he smarted ; and that the story he now tells was first told for the purpose of damaging Mr. Barber, and was now only told under circumstances which induce the belief that it would not now have been told if it had not been told before. I have not, in this statement, alluded particularly to the cross-examination of McDougall, and I need say no more as to it, than that it fully bears out the view which I have expressed.

I dismiss the petition with costs.

The petitioners appealed from the above judgment to the Court of Appeal, but the appeal was dismissed with costs.

DOMINION ELECTIONS, 1878.

NORTH YORK.

BEFORE MR. VICE-CHANCELLOR BLAKE.

TORONTO, 23rd December, 1878.

WILLIAM CROMWELL OLIVER *et al.*, *Petitioners*, v.FREDERICK WILLIAM STRANGE, *Respondent*.*Practice—Deposit of security—Irregularity.*

The security in this case was offered, in the shape of a Dominion note for \$1,000, to the Registrar of the Court of Chancery, who stated to the petitioners' solicitors that he could not receive it, but directed them to make payment of it through the Accountant of the Court in the same manner as moneys were usually paid into court. The solicitors then paid the money into the bank to the credit of the matter of the petition, according to the usual practice of the Court of Chancery.

Held, That the deposit of the security, as required by the Act, was properly given.

The petition contained the usual charges of corrupt practices, and was filed in the Court of Chancery. The respondent filed preliminary objections to the petition, as follows :

That the petitioners have not, as required by the Dominion Controverted Elections Act, 1874 (37 Vic., c. 10, s. 8, subsecs. 4-7), on the presentation of the said petition, deposited with the Clerk of the Court, in gold coin or in Dominion notes, the sum of \$1,000, or any sum, as security for the respondent's costs, and the other persons in the Act referred to.

The petitioners moved to set aside the preliminary objections, and filed an affidavit of the petitioners' solicitors, stating that, when presenting the petition, they had offered a Dominion note for \$1,000 to the Registrar of the Court of Chancery, who stated he could not receive it, but directed the solicitors to make payment through the Accountant of the court, in the same manner as moneys were usually paid into court under the practice of the Court of Chancery. The Dominion note was then paid into the bank to the credit of this matter, in the same

manner as moneys of ordinary suits in the Court of Chancery. The certificate of payment was as follows: "The Canadian Bank of Commerce, Toronto, 16th day of November, 1878.—\$1,000. *Re* North Riding County of York Election, 1878. This is to certify that William C. Oliver and Abram L. Taylor have this day paid into this bank, to the credit of this account in the Court of Chancery in Ontario, the sum of one thousand dollars."

Mr. D'Alton McCarthy, Q.C., for the respondent.

Mr. G. D'Arcy Boulton for petitioner.

BLAKE, V.C.—This is not an objection to the petition. The main object sought by the Act is to have \$1,000 deposited to answer any order that may be made as to costs or otherwise. This has been done. The money came virtually to the hands of the clerk, and he directed its deposit in the court, and it found its way there. The only irregularity then is, that the money was deposited to this particular account, but not headed with the general statement, "The Dominion Controverted Elections' Account of the Court of Chancery." Here the deposit was in the shape of a Dominion note.

The Act says, "the Clerk of the Court shall give a receipt for such deposit, which shall be evidence of the sufficiency thereof."

I overrule the objections, but I will not do so with costs.

SOUTH ONTARIO.

BEFORE MR. JUSTICE GALT.

WHITBY, 14th to 20th January, 1879.

DANIEL MCKAY, *Petitioner*, v. FRANCIS WAYLAND GLEN,
Respondent.*Gifts and Charities—Bribery—Offers.*

The respondent gave certain gifts and charities to a religious community, a church, and certain local associations, none of which were political: the election was never mentioned.

Held, that where charitable donations are given generally, and not with a view to influence any individual voter, they will not vitiate an election. There must be such large and indiscriminate gifts as to leave no doubt on any one's mind that the effect had been to constitute general bribery; and there was no evidence of such gifts or expenditure in this case.

Seemle, that s. 92 of the Dominion Elections Act, 1874, points to cases where money, or valuable consideration, is given to a voter, and not to a community generally.

Charges against the respondent, that he had promised an office to the son of a voter, and a contract to the voter himself, were contradicted by other evidence, and dismissed.

One P., some years before the election, claimed that the respondent was indebted to him, but the respondent denied all liability, and the dispute caused a coolness between them. One H., four months before the election, was employed by P. to collect another account from the respondent, and did so. H. stated to P. that as the respondent was in a good humor, it would be a good opportunity to get the old account settled, and asked P. if he would support the respondent in case the old account was settled. P. replied that he might promise what he liked. H. then took the account to the respondent, who looked it over and gave his note for it. H. and the respondent never referred to the election, nor to the settlement as affecting the election.

Held, that the respondent had not been guilty of bribery in this transaction.

A charge against an agent of the respondent, that he had promised to procure the office of police magistrate for one W., was denied by the agent and the respondent; and it further appearing that W. had acted on the committee, and voted, for the opposing candidate, the charge was dismissed.

The petition contained the usual charges of corrupt practices. The election took place on the 10th and 17th September, 1878.

Mr. D'Alton McCarthy, Q.C., and Mr. T. G. Blackstock, for petitioner.

Mr. Robinson, Q.C., and Mr. Edgar, for respondent.

The evidence affecting the charges of corrupt practices is set out in the judgment.

GALT, J.—The petition contained charges of bribery and corrupt practices by the respondent and his agents; it did not claim the seat.

There were in all fifty-three cases mentioned in the particulars, to which several others were allowed to be added during the trial.

The charges first proceeded with had reference to personal acts of respondent, viz.: A gift of trees to the Roman Catholic cemetery of the village of Oshawa; donations to a religious body belonging to that communion called "The Sisters;" gifts to rifle associations; money spent at picnics; and a subscription of \$50 to discharge the debt on a church. The respondent was the only witness examined as to these charges, and stated that in January or February previous to the election, seeing the cemetery in a very bare condition, he had offered the Roman Catholic priest trees to plant if he wished them. The offer was accepted and the respondent ordered them, and on their arrival paid for them. The cost was \$130. He stated that it was purely a voluntary offer on his part.

As regards charge No. 53, respondent admitted that he had in the winter of 1877 furnished provisions to "The Sisters" to the extent of \$60; he stated also that he had been in the habit of giving them money when applied to, and had also paid the half of the taxes on their house, the other half having been remitted by the corporation.

As regards charges 48 and 49, respondent admitted that he had subscribed \$50 to a Rifle Association for a special prize, to which a year or two before he had given \$30. No reference was made to these latter charges, either during the case or in the summing up of the learned counsel.

As regards charge No. 52, respondent admitted that he had subscribed \$50 in payment of a debt due on this

church. Nothing was said in reference to it during the case or in the summing up.

As respects money spent at the picnics, he admitted he had spent about \$30 at one held by the Roman Catholics on 1st July; and on the same day he attended another held by the Sons of England Association, at which he spent the sum of \$175. At this last there was, what appears to be very common now in the country, contests for prizes dependent on votes cast for particular persons. On this occasion there was one between himself and Mr. Gibbs, for a pitcher (worth some \$40 or \$50) to be given to the wife of the successful party. The persons voting paid a small sum of money for each vote; the respondent among others voted for himself, while others voted for Mr. Gibbs, among whom was a person named Dingle, hereafter mentioned, who cast no less than one thousand votes for him. The object of these contests was to raise money for the society, and I confess I can see no impropriety in what was done by the respondent. It is to be observed that none of those gifts or expenditures were made to any political association; they were, particularly as respects the Rifle Association, to bodies which, in all probability, were composed of men of both political parties. The respondent has also sworn that the election was never mentioned or alluded to in the slightest degree in reference to any of these gifts or charities, and no evidence was called to contradict him.

By section 92 of 37 Vic., chap. 9, every person who, directly or indirectly, by himself, or by any other person on his behalf, gives, lends, or agrees to give or lend, or offers or promises any money or valuable consideration, or promises to procure, or to endeavor to procure, any money or valuable consideration to or for any voter, or to or for any person on behalf of any voter, or to or for any person in order to induce any voter to vote or refrain from voting, or corruptly does any act as aforesaid, on account of such voter having voted or refrained from voting at any election, shall be deemed guilty of bribery.

The above enactment seems to point to any money or valuable consideration given to any voter, not to the community generally.

In the *Hastings case* (1 O'M. & H. 218), where the charge was of lavish expenditure in anticipation of an election, Mr. Justice Blackburn said: "There is no law yet which says that any lavish expenditure in a neighborhood, with a view of gaining influence in the neighborhood and influencing an election, is illegal at all. In order to constitute anything which would be a corrupt practice in respect of expenditure of that sort, it must be made with a view of influencing a particular vote. If such an expenditure is made at a place, with a tacit understanding of this kind, 'I will incur bills, and spend my money with you, if you will vote for me,' that not being the side on which you intended to vote; if it is intended to produce that effect upon the vote, it amounts to bribery." In the *Windsor case* (2 O'M. & H. 90), which was a charge of colorable charity, Mr. Baron Bramwell says: "It is certain that the coming election must have been present to his mind when he gave away these things. But there is no harm in it if a man has a legitimate motive for doing a thing, although in addition to that he has a motive which, if it stood alone, would be an illegitimate one. He is not to refrain from doing that which he might legitimately have done, on account of the existence of this motive, which by itself would have been an illegitimate motive. If the respondent had not been an intending candidate for the borough, and yet had done as he has done in respect to these gifts, there would have been nothing illegal in what he did; and the fact that he did intend to represent Windsor, and thought good would be done to him, and that he would gain popularity by this, does not make that corrupt which otherwise would not be corrupt at all."

In the *Boston case* (2 O'M. & H. 160), which was also a charge of charitable gifts for a corrupt purpose, it appeared that the respondent, who had formerly represented

the borough, had determined to distribute a large quantity of coals among the poor in the borough, and wrote a letter to a gentleman expressing that desire. The coal was distributed, but instead of the coals being distributed as the respondent Parry had intended, to the poor of the district, cards were printed without his knowledge, and bearing the signature of one Dyer (who acted subsequently at the election as the respondent's agent for the election expenses), with these words on them, "Please deliver—— cwt. of coals to A. D——, for Thomas Parry. B. B. Dyer;" and on the back of the cards were the words, "With Mr. Parry's compliments." Mr. Justice Grove, in giving judgment, says: "It has been over and over again held that an unfair and improper donation with the view, motive, and intention of securing a vote, is corrupt within the meaning of the Corrupt Practices Act, 1854. It might be a doubtful question (and it is one which was discussed in the *Windsor case*) whether, assuming two motives to exist—the one being pure, and the other with the intention to corrupt—you could exclude the corrupt intention and rely wholly upon the pure intention. I think that must be rather a question of degree. A man may wish to be charitable in a neighborhood, but at the same time he may have an eye to his own interests; and there must be in fact some limiting line, incapable of being defined in words, where the two things come to a nearly equal balance. We know, for instance, that persons looking forward to be candidates for Parliament are generally pretty liberal to the charities in the district, and such liberality, as far as I am aware, has never been held to vitiate the election; I suppose upon the grounds that such persons do not select voters, as contradistinguished from non-voters, as the objects of their charity; that the object itself is good, and that although the donors may in so bestowing their charity look to their personal interests and personal ambition, still a man is not to be injured in an object of personal ambition, merely because he does good which perhaps without that stimulus he might not

have been induced to do." The learned Judge acquitted the respondent of personal corruption, but held that the act of the agent, in distributing the coals in the way he did, made it an agency for securing votes for him, and was therefore corrupt within the meaning of the statute.

I refer particularly to this case, as it was relied on strongly by both the learned counsel in their very able addresses; and it appears to me to sustain the argument that so long as charitable donations are given generally, and not with a view to influence any individual voter, they will not vitiate an election. There must be such large and indiscriminate gifts as to leave no doubt on any one's mind that the effect had been to corrupt the public mind, or, in other words, to constitute general bribery. In the *Guildford case* (1 O'M. & H. 15) Mr. Justice Willes said: "It is unnecessary to go into any inquiry here as to general bribery. We have no evidence whatever of the prevalence of general bribery at the election. But do not be mistaken, and suppose that because these inquiries turn upon individual cases, and upon whether these cases are traced to the member or his agents, that general corruption quite apart from acts of the members or their agents would not have the effect of vitiating an election. It clearly would, because it would show that there was no pure or free choice in the matter, that what had occurred was a sham, and not a reality. This, however, is out of the question here. There may also be bribery so large in amount as in itself to furnish evidence, not indeed of general bribery, but of bribery coming from a fund with which it is impossible, as a matter of common sense, not to conclude that the member or at least an agent of his was acquainted. In that case the proper result would be the vitiation of the election, because the bribery was of such an extent as must have come to the knowledge of the member or his agent."

There was no such evidence in the present case. The case of the *South Huron election* (24 C. P. 488, *ante* p. 576) was referred to by Mr. McCarthy as showing that

the gifts to the churches mentioned in that case were evidence of corrupt practices on the part of the respondent, but the circumstances were entirely different. It was there proved that large sums of money were illegally spent, and there could be no doubt corruption had very generally prevailed, so much so that it was admitted the election was void. Moreover, in giving judgment, the learned Chief Justice says: "We have no information as to where these churches are, or anything as to the probable effect of the subscriptions thereto on the electors of the riding. We would naturally have looked for something enabling us more fully to understand the true position of the matter. For example, it might not have been unimportant to have ascertained if the respondent, who states that he has represented the riding since 1867, was in the habit of giving money to these churches on previous occasions, or, as we find in some of the English cases, that as a representative he was in the habit of subscribing liberally to charitable purposes at Christmas time." The remarks of the learned Chief Justice are completely met in the present case. The charity was to a charitable institution in his own town; the cemetery was attached to the same place; the Rifle Association belonged to his own county, and he had previously contributed to one of them; and, as respects his general conduct in reference to churches, etc., he says, in his examination by Mr. Robinson, "I have not given away more this year than in other years. I have given, including my own church, one thousand a year for the past ten years. Since 1st January, 1876, I have paid to my own church at least \$2,500." That statement was uncontradicted, and as it was of such a specific nature that it could have been, I have no doubt that it was true. I therefore find that the corrupt practices here charged have not been proved.

Charge No. 37, that the respondent bribed one William Thomas Dingle by promises of office for his son. There was also a further charge—No 6 of the added charges—that the respondent promised him a contract if he would support him.

These two charges may be considered together ; and if the evidence given by Dingle himself be accepted as true, they might be considered as proven ; but he is contradicted in every particular. He said on his re-examination, referring to a conversation which he had with the respondent towards the end of June, " Mr. Glen said to me that I should have the job, and he would do everything he could for me, or my son, if I would support him." In his examination he says, in reply to a question by Mr. McCarthy as to whether he had had more than one interview or conversation with Mr. Glen respecting his son, "*No ; not about my son ; not about this.*" In reply to the following question by Mr. Robinson, "*Do you mean to say you had never asked Mr. Glen to endeavor to get an office for your son ?*" he said, "*I never did.*" Mr. Garvin, his brother-in-law, says, referring to a conversation with Mr. Glen which had taken place on the train previous to this, " Mr. Dingle asked me the Saturday previous to interest myself with Mr. Glen to endeavor to get a situation for his eldest son, Frank, which I promised to do." Mr. Garvin had also written to Dingle on this very subject. This letter was produced, and as it was very much commented on, I will read it :

TORONTO, Ont., 19th June, 1878.

DEAR THOMAS,—I had a long interview with Mr. Glen the day I left Oshawa. He seems willing to do what he can, but he will do nothing which would invalidate his election, which he considers certain. He states that he has always used his influence in your favor in the matter of contracts, irrespective of politics, and will continue to do so. He says further that the Gibbs never forgive ; and if you have offended them in any way, they will never forgive it, but will always use it to your disadvantage. I think there is no doubt of this ; and I quite agree with him that they are ready to get rid of you if possible. As to Frank, Mr. Glen will get him an appointment either in a bank or in a Government situation, whichever you desire ; but it must be understood that he does it from friendly motives and not on account of political influence. He reminded me, however, that you could not expect a youth of Frank's age—no matter how capable—to receive an appointment involving a large responsibility. This is quite plain ; and he advised a bank appointment on account of the special training it would confer, which would be of advantage in any calling he might engage in in after life. If you will write me what you would prefer, I will write him or will see him if you consider it advisable ; or it might be as well if you would talk over the matter with him personally, when you could see how your views agree in regard to it. I have nothing to advise. You know best

what you desire for Frank, but I see the difficulty of age which suggests itself at the outset. Let me hear from you by return, at Hamilton.

Yours truly, (Signed), JNO. GARVIN.

This was in Mr. Dingle's possession at the meeting in June, and consequently, although it may be and probably is true that he had not personally applied to Mr. Glen for a situation for his son, he had requested Mr. Garvin to do so, and knew that it had been done. Mr. Dingle states that Mr. Glen asked him if he had received a letter from Garvin, and he replied that he had. Mr. Glen denies that he ever asked him if he had received such a letter; in fact, in his original examination, before any other evidence had been given, he swears that to the best of his recollection no such conversation ever did take place. It is not asserted by Dingle that any but one conversation did. Then, as respects the interview with Garvin, Mr. Glen in his original examination says that, meeting Garvin on the train, "I asked him to use influence with Dingle and Pedlar (who are brothers-in-law of Garvin) to keep them quiet, for I did not expect them to vote for me." Garvin has himself given us a detailed account of what took place between himself and Mr. Glen, the result being that on his return to Hamilton he writes the letter already referred to. We must therefore, so far as Mr. Garvin is concerned, consider that what he did is contained in the letter, which in no way refers to the election at all. I therefore consider charge No. 37 is not proved.

Then, as regards No. 6 of the added charges, it must be borne in mind that the conversation in which this promise is said to have taken place was in June, towards the latter end of it. Mr. Glen denies that he ever agreed to give Dingle the contract at all. Gliddon, a witness, stated that in a conversation with Dingle at Oshawa, on the night of the 3rd of August, he said to Dingle, "Glen wants you to vote for him," to which Dingle replied, "No, he never asked me to vote for him; he knows which way I go; only he does not want me to do anything against

him." Another witness, James Gall, said, in reference to a conversation which he had with Dingle in August, that Dingle said, "If Glen had acted the gentleman with me, and done the work as he agreed to do, he could not have expected me but to vote against him; but I would not have done any more than that; he could not expect but that I would vote against him; give my silent vote against him." He added, "Now he was going to do all he could to defeat Mr. Glen." Dingle, on his previous examination, on being questioned as to his conversations with the above witnesses, had stated as respects Gliddon, "That he had never told Gliddon that Glen knew his politics, and never asked him to support him." As respects Gall, he said, "I do not know that I told him I would support Glen if I got the contract. I say most positively I never told Mr. Gall to my knowledge." We find also that at a picnic which took place on the 1st July, to which I have already referred, on a contest for a pitcher as a proof of public popularity, Dingle cast one thousand votes for Mr. Gibbs, as against Mr. Glen, which appears to me to be entirely inconsistent with his having received the promise of a contract on condition of his supporting Mr. Glen at the coming election. The contract was in reality given to another person about the end of August or beginning of September, shortly previous to the election. It is therefore plain that, so far as Dingle was concerned, the respondent acted in a manner directly contrary to what Dingle has sworn he promised to do—and did so at a time when, if he expected to secure his support by virtue of the offer of the contract, he took the most effectual means to arouse his active opposition, which he did. I am of opinion that this charge is not proved.

Charge No. 31, George H. Pedlar bribed by Mr. Glen by settlement of a claim for money. It appears that some years before the election Mr. Pedlar had had a transaction with Mr. Glen respecting some wringers, and Mr. Pedlar contended that Mr. Glen was indebted to him

for a deficiency of fifty-three wringers. Mr. Glen at that time denied all liability. This occasioned a coolness between them, and they had not spoken to each other for some time until the beginning of 1878. A person by the name of Hawthorne, who was employed both by the respondent and by Pedlar to collect accounts, as their agent respectively, was anxious to bring about a reconciliation between them, and this he effected in March last. In May, 1878, Hawthorne was employed by Pedlar to obtain payment of an account which he had against the respondent for copper, and did so, and obtained a note for the amount. On handing the note to Mr. Pedlar he said he thought that Mr. Glen was in good humor, and that it would be a good opportunity to get the other account settled. He stated he knew what the other account was; it was for the wringers. He asked Mr. Pedlar whether in case the account were settled he would support Mr. Glen at the election. Pedlar said: "You can promise what you like," and, according to his own evidence, reserved to himself the right to act as he might think fit. Mr. Hawthorne took the account to the respondent, who looked over it and gave his note for it. Hawthorne states positively that at the time he presented the account to Mr. Glen, and Mr. Glen gave the note, nothing whatever was said about the election. The respondent, in reference to this charge, says that nothing was ever said to him about the settlement of the account in relation to the election, and that the settlement was never hinted to him as referring to his election. That statement is corroborated by the evidence of Hawthorne. I therefore find that the charge is not proved. I may add that there was no evidence that Hawthorne was an agent of the respondent as respects the election.

On the morning of the last day of the trial Mr. McCarthy applied to add another charge of corrupt practices by an agent, by promise of office to one Wallace, to induce him to vote for, or refrain from voting against, the respondent. This application was supported by an affidavit

of the gentleman who had been engaged in preparing the evidence in support of the petition, that the evidence had come to his knowledge only that morning. The charge was allowed to be added.

In the *Cheltenham case* (1 O'M. & H. 64), Martin, B., in reference to bribing by office, says : " Where the evidence as to bribery consists merely of offers or proposals to bribe, the evidence required should be stronger than that with respect to bribery itself ; or where the alleged bribing is an offer of employment it ought to be made out beyond all doubt, because when two people are talking of a thing which is not carried out, it may be that they honestly give their evidence, but one person understands what is said by another differently from what he intends it." In the *Coventry case* (*ibid.* 107) Mr. Justice Willes said, with regard to mere offers to bribe : " Although these cases have been classed below those of bribery by both the learned counsel, it cannot be supposed that any offer to bribe is not as bad as the actual payment of money. It is a legal offence, although these cases have been spoken of as being an inferior class, by reason of the difficulty of proof, from the possibility of people being mistaken in their accounts of conversations in which offers were made, whereas there can be no mistake as to the actual payment of money." Again, in the *Mallow case* (2 O'M. & H. 72), Mr. Justice Morris said : " I have desired to apply two rules to work out my judgment by. They are shortly these : First, that I should be sure, very sure, before I come to a decision adverse to any party where his character or credit is involved ; second, that offers or conversations unaccompanied by any acts should be much more strongly proved in evidence than where some clear definite act has followed the alleged offer or conversation."

The above observations apply with much force to the present case. It appeared the witness Wallace and the alleged agent, Higgins, were old friends ; that on 17th June, Wallace had made application to be appointed

police magistrate of the town of Whitby, no such office being then in existence ; and the purport of his evidence is that Higgins promised him Mr. Glen's support, and asked him to refrain from voting for Mr. Gibbs himself and get others to refrain from voting for him. This is positively denied by Higgins, who said he was willing to support Wallace's application as an old friend ; that he did speak to Mr. Glen, but that he never asked Wallace to abstain from voting. Mr. Glen says that Higgins did speak to him in favor of Wallace ; but he thought it was a joke, and that he told Higgins he thought Wallace a very improper person for the office. Nothing was ever done ; no application was ever made by the Council for the appointment of a police magistrate ; and nothing more was said about it. This was some considerable time before the election, and the witness not only voted for Mr. Gibbs but acted as one of his committee. I find this charge is not proved.

I find that no corrupt practices have been proved to have been committed by or with the knowledge or consent of the said Francis Wayland Glen.

Petition dismissed with costs.

The Supreme Court of Canada, on the appeal of the petitioner, affirmed the judgment of Mr. Justice Galt. (3 Sup. Ct. R. 641.)

(14 *Commons Journal*, 1879, p. 14.)

EAST HASTINGS.

BEFORE MR. JUSTICE ARMOUR.

BELLEVILLE, 27th January, 1879.

WILLIAM ROBERT AYLESWORTH, *Petitioner*, v. JOHN WHITE, *Respondent*.*Ballots—Marks by Deputy Returning Officers—Void election.*

Certain deputy returning officers, before giving out ballot papers to the voters at the election in question, placed numbers on the ballots corresponding with the numbers attached to the names of such voters on the voters' lists.

- Held*, 1. That the deputy returning officers had acted contrary to law in numbering the ballots, and that the ballots so numbered should be rejected as tending to the identification of the voters.
2. That such conduct of the deputy returning officers having had the effect of changing the result of the election, a new election was ordered.

The petition contained the usual charges of corrupt practices, and claimed the seat for the petitioner on a scrutiny of the ballots.

Mr. Bethune, Q.C., and Mr. Holden, for petitioner.

Mr. G. D. Dickson, and Mr. Fraclick, for respondent.

It appeared that the petitioner and respondent were candidates at the election held on the 10th and 17th September, 1878, the vote being: For petitioner, 1,205; for respondent, 1,188. On a recount before the Junior Judge of the County of Hastings, it appeared that the ballots for five polling divisions, Nos. 1 and 5 Hungerford, Nos. 3 and 5 Thurlow, and No. 2 Tyendinaga, had numbers on the back. The Junior Judge rejected the ballots in two of the divisions, No. 5 Thurlow and No. 2 Tyendinaga, and allowed the ballots in the three other divisions, thereby giving the seat to the respondent by a majority of twenty votes. The evidence as to the placing of numbers on the backs of the ballots was as follows:

Benjamin Henry, deputy returning officer, No. 1, Hungerford: I put the same number on the ballots and counterfoil; I held the counterfoil in my hand until the

voter came back with his ballot, and then I saw that the same number and my initials were on the ballot that the voter brought back to me, and then I tore up the counterfoil and put the ballot in the box. The number was taken at random without reference to the voters' list, and was a private mark of my own. I did not in any case put the same number on the ballot as was the number of that particular voter on the voters' list. I could not identify a voter by the numbers on the ballots, nor could any one else.

In this division it was found that 35 of White's and 2 of Aylesworth's ballots corresponded with the numbers on the voters' list.

Michael Lesarge, deputy returning officer, No. 5, Hungerford : I commenced to number the ballots from No. 1 of my own accord, when I was directed by the scrutineer of Mr. White, a namesake of his, to number them from the voters' list ; then I commenced doing so. I think I had numbered eight or ten when I was told by Mr. White that I had to number the ballots according to the voters' list. I am not certain whether the numbers I put on the ballots were the numbers from the voters' list kept by me, or from the voters' list kept by the clerk. I followed the numbering on one of the books, whichever it was ; some ballots are not numbered ; eighteen is the lowest number which is on the ballots. I put the numbers on the counterfoils at first ; then I stopped and put the numbers on the ballots.

In this division it was found that in the voters' list kept by the deputy returning officer, the names of the voters were numbered up to 92 ; that on the ballots 18 was the lowest, and 92 the highest number ; and that 10 of Aylesworth's and 2 of White's ballots were not numbered.

Edward Thresher, deputy returning officer, No. 3, Thurlow : I do not know who put the figures on the backs of the ballots now shown me. They might have been put on when the ballots were counted. There were

no numbers on the ballots when they were put into the box, and there were no numbers on the ballots when they were taken out and counted. Mr. Taylor and Mr. Brentnall were scrutineers.

Eleazer Brentnall: I assisted to count the ballots as Mr. Thresher took them out of the box. He said who they were for, and I put on the numbers. I numbered them from one forward, just as they came out of the box, to see if they tallied right. These numbers were not on them when they were taken out of the ballot box.

Albert Loucks, deputy returning officer, No. 5, Thurlow: The numbers on the ballots are the same as those which appear on the voters' list.

Edward Hollingsworth, deputy returning officer, No. 2, Tyendinaga: The numbers on the ballots are the same as those on the voters' list. The number which was opposite a voter's name on the list was the number which I always put on the ballot, except in one case where I made a mistake, and put on 8 instead of 2.

At the opening of the case, counsel for the petitioner submitted that the recount by the County Judge was the only recount that could be had, and that his recount was final, and not open to revision by any other Court.

Mr. Justice ARMOUR held that the recount by the County Judge was not final, and that this Court had power to recount upon a petition like the present.

Counsel for the petitioner then submitted that all the ballots ought to be allowed, and that the proper way of determining the question as to their validity was upon the ballots themselves, and that parol evidence could not be received as to the nature of a mark on the ballots, or to show with what intent the deputy returning officer put marks upon the ballots.

Mr. Justice ARMOUR held that such evidence could be admitted.

At the close of the evidence the ballots were examined and it appeared that the following had numbers upon

them, as explained by the evidence given above : No. 1, Hungerford, Aylesworth, 2, White, 35; No. 5, Hungerford, Aylesworth, 56, White, 24; No. 3, Thurlow, Aylesworth, 55, White, 50; No. 5, Thurlow, Aylesworth, 88, White, 49; No. 2, Tyendinaga; Aylesworth, 77, White, 79.

Mr. Bethune, for the petitioner, thereupon admitted that if the ballots cast at No. 5, Thurlow, and No. 2, Tyendinaga, were rightly rejected, then, unless all the ballots cast at No. 1, Hungerford, were rejected, the petitioner could not obtain a majority; that if all the ballots cast at No. 1, Hungerford, were not rejected, the petitioner would be in a minority, and he submitted that in that event it was clear that there must be a new election; that the act which caused the ballots cast at No. 5, Thurlow, and No. 2, Tyendinaga, to be rejected, was the act of the deputy returning officer; and that the constituency must not be disfranchised by the act of that officer.

[*ARMOUR, J.*—If what was done at No. 5, Thurlow, and No. 2, Tyendinaga, affected the result of the election by causing the respondent to be returned when otherwise the petitioner would have been returned, there must be a new election].

Mr. Dickson, for the respondent, admitted that such a result seemed consistent with justice and common sense. He cited *Woodward v. Sarsons* (L. R. 10 C. P. 753).

ARMOUR, J.—I think the ballots cast at No. 5, Thurlow, and No. 2, Tyendinaga, were rightly rejected. The statute, 37 Vic., c. 9, s. 55 (Can.), as amended by the statute, 41 Vic., c. 6, s. 10 (Can.), provides that in counting the votes the deputy returning officer “shall reject all “ballot papers which have not been supplied by the “deputy returning officer, all those by which votes have “been given for more candidates than are to be elected, “and all those upon which there is any writing or mark “by which the voter could be identified.” The provisions are imperative. The ballots cast at these two polling subdivision had marks upon them by which the voter could

be identified. By comparing the numbers upon the ballots with the numbers on the voters' lists, it could be ascertained which way each voter had voted. *Woodward v. Sarsons* is precisely in point, and must govern this case. It is there said that the ballot paper must not be marked so as to show that the voter intended to vote for more candidates than he was entitled to vote for, nor so as to leave it uncertain whether he intended to vote at all, or for which candidate he intended to vote, nor so as to make it possible by seeing the paper itself, or by reference to other available facts, to identify the way in which he has voted.

I think I cannot reject all the ballots cast at No. 1, Hungerford, and perhaps not any of them. All that I have any doubt about are those having upon them numbers corresponding with numbers set opposite to the names of voters on the voters' list; but the rejection of these would not put the petitioner in a majority, and it becomes therefore unnecessary to consider whether they ought to be rejected. The rest of the ballots cast at this polling subdivision were proved not to have had any writing or marks upon them by which the voter could be identified. They were numbered, and improperly numbered, by the deputy returning officer; but his evidence, which is uncontradicted, shows that the voters could not be identified by the numbers or by reference to other available facts.

There must therefore be a new election, and without costs. The petitioner, Mr. Aylesworth, would have had a majority of the votes of the electors, had it not been for the irregularities of the deputy returning officers, by which, and the recount before the County Judge, he has been put in a minority. The effect of these irregularities is not to seat the minority candidate, but to avoid the election. The minority candidate was returned by reason of the deputy returning officers' irregular mode of conducting the poll, by which the ballots of a certain number of voters were as effectually destroyed as if they had been put in the stove. (13 *Commons Journal*, 1879, p. 4.)

EAST ELGIN.

BEFORE MR. VICE-CHANCELLOR BLAKE.

ST. THOMAS, 27th-28th January, and 7th February, 1879.

ARCHIBALD BLUE, *Petitioner*, v. THOMAS ARKELL,
Respondent.*Excessive treating by an agent—"Common custom of the country"—
Corrupt practice—Costs.*

One D., who had been a candidate for various offices for twenty years prior to the election in question, and had freely employed treating as an element in his canvassing, became an agent of the respondent, and treated extensively, as was his common practice, during the election. The respondent was aware of D.'s practices, and once, in the early part of the canvass, cautioned D. as to his treating, but never repudiated him as his agent.

Held, on the evidence, that as D. did no more in the way of treating during the election than he had done on former occasions, and had employed treating as he ordinarily did as his argument, and had not used it as a means of corruptly influencing the electors, he was not guilty of a corrupt practice.

Seemle, the treating proved in this case, if practised by one not theretofore given to such practice, would have been sufficient to have avoided the election.

Observations on the law as it now stands, as holding out inducements to candidates to employ men who are habitual drinkers to canvass by systematic treating, and thus cause electioneering to depend upon popularity aroused by treating, rather than the merits of the candidates, or the measures they advocate.

The petition was dismissed without costs, following the *Carrickfergus case* (21 L. T. N. S. 356; 1 O'M. & H. 264).

The petition contained the usual charges of corrupt practices. Prior to the trial, preliminary objections to certain allegations of the petition were disposed of by Mr. Vice-Chancellor Proudfoot (4 App. R. 412).

Mr. Colin Macdougall and Mr. Coyne, for petitioner.

Mr. D'Alton McCarthy, Q.C., and Mr. Ermatinger, for respondent.

BLAKE, V. C.—All the charges have been disposed of in this case except those connected with Samuel Day, as to which the following is the material testimony:

The respondent in his evidence says of him: "Mr. Day lives near town. He was nominated, and retired in my

favor. He asked the delegates there to support me. Mr. Day went with me. Mr. Day went with me through the Air Line and Canada Southern shops. We were canvassing. I suppose he was doing what he could to promote my election. He attended a meeting at Dexter and Copenhagen; he attended the meeting at Aylmer. After the nomination he went to assist me at the Copenhagen meeting. No doubt his assistance was valuable. I knew he was actively engaged for me. I told Mr. Day in the early part of the canvass he must be careful not to treat. Mr. Day is in independent circumstances. He said he had no money on nomination day, and I loaned him ten dollars. He had come away without funds. He has borrowed money from me a hundred times, and I from him. From beginning to end I never directly or indirectly treated, or used any undue influence, through the six weeks the election lasted."

Samuel Day : " I treat frequently ; I have done so ever since I became a man. People asked me to have a glass of ale and I returned it. I am very fond of company. I always ask other people when about me to drink ; this is my habit. I keep no liquor in my house. I never drank alone in my life. I never offered a man anything with the intention of influencing his vote. I treated Wooley. I don't know the occasion to which he referred. Maybe I asked him into Penwarden's. I never held out an inducement. He told me he was not going to vote. I said, ' That is right. ' I never said anything about influencing his vote. Mr. Arkell cautioned me about the treating. I said it was none of his business, and that I would do as I had always done. I knew the law was strict, and that I dare not treat with the intention of influencing. I might have treated Mr. Lightfoot and Mr. Mordinger. I do not think you could influence either of these men. Sinclair is much about the taverns ; he drinks a good deal and does not treat. He takes an active part in politics. He introduced the subject. I had not the election on my mind when I took the electors in to treat.

I should have liked to have seen Mr. Arkell elected. I mentioned it was necessary to have a change in the government. I do more work outside than on the platform."

[The evidence of the other witnesses was confirmatory of Day's usual practice of indiscriminate treating.]

I have perused all the cases to which I have been referred, and any others that I have been able to find on the subject of treating, and from them quote the following passages in the English cases bearing on the construction of the section in question, as to treating. Mr. Justice Willes in the *Tamworth case* (1 O'M. & H. 82-3) says: "Treating, to be corrupt, must be treating under circumstances and in a manner that the person who treated used meat or drink with a corrupt mind, that is, with a view to induce people, by the pampering of their appetites, to vote or to abstain from voting, and in so doing to act otherwise than they would have done without the inducement of meat or drink." Mr. Justice Blackburn, in the *Wallingford case* (1 O'M. & H. 58), says: "I think that what the Legislature means by the word 'corruptly,' for the purpose of influencing a vote, is this: that whenever a candidate is, either by himself or by his agent, in any way accessory to providing meat, drink, or entertainment for the purpose of being elected, with an intention to produce an effect upon the election, that amounts to corrupt treating. Whenever also the intention is by such means to gain popularity and thereby to affect the election, or if it be that persons are afraid that if they do not provide entertainment and drink to secure the strong interest of the publicans, and of the persons who like drink whenever they can get it for nothing, they will become unpopular, and they therefore provide it in order to affect the election—when there is an intention in the mind, either of the candidate or his agent, to produce that effect, then I think that is corrupt treating."

Again, in the *Coventry case* (1 O'M. & H. 106) Mr. Justice Willes says: "When eating and drinking take the

form of enticing people for the purpose of inducing them to change their minds, and to vote for the party to which they do not belong, then it becomes corrupt, and is forbidden by the statute. Until that arrives, the mere fact of eating and drinking, even with the connection which the supper had with politics, is not sufficient to make out corrupt treating." Again, in the *Bodmin case* (1 O'M. & H. 125): "The Judge must satisfy his mind whether that which was done was really done if so unusual and so suspicious a way that he ought to impute to the person who has done it a criminal intention in doing it, or whether the circumstances are such that it may fairly be imputed to the man's generosity, or his profusion, or his desire to express his good-will to those who honestly help his cause, without resorting to the illegal means of attracting voters by means of an appeal to their appetites." Mr. Baron Martin says (*Bradford case*, 1 O'M. & H. 37): "What is the exact meaning of the word 'corruptly?' I am satisfied that it means a thing done with an evil mind and intention, and unless there be an evil mind or an evil intention accompanying the act, it is not corruptly done. 'Corruptly' means an act done by a man knowing that he is doing what is wrong, and doing it with an evil object." In the *Lichfield case* (1 O'M. & H. 25), Mr. Justice Willes says: "It may be doubted whether treating in the sense of ingratiation by mere hospitality, even to the extent of profusion, was struck at by the common law. It is, however, certain that it is now forbidden under penalties by the 17th and 18th Vic., c. 102, whenever it is resorted to for the purpose of pampering people's appetites, and thereby inducing electors either to vote or to abstain from voting otherwise than they would have done if their palates had not been tickled by eating and drinking supplied by the candidates."

I should have been glad if I could have found that it had been held in this country that the ordinary treating, as here practised, was a means of ingratiation, of enticing or inducing, in a way repugnant to the spirit of our

election laws, and which, if indulged in during the canvass by either the candidate or his agent, would be a reason for setting aside the election. It is true that the cases to which I shall refer were disposed of under an enactment differing from that on which this case depends, but the law for the guidance of electors and candidates has been there expounded, and principles have been distinctly laid down by which I am bound.

In the *Glengarry case* (*ante* p. 8, s. c., *Brough on Elections*, p. 22), Hagarty, C. J., uses the following language: "I feel bound to say that the evidence given by the respondent seemed given with great candor, and favorably impressed me as to its truth, and I feel wholly unable to draw from it any honest belief that he provided this entertainment, consisting apparently of a glass of liquor all around, with any idea that he was thereby seeking to influence the election or promote his election in any of the senses referred to in the cases. He was unaware of the state of the law on this subject, as he says. He is not to be excused on the ground of his ignorance; but the fact (his ignorance) is not wholly unimportant as bearing on the common custom of the country—too common as it unfortunately is—of making all friendly meetings the occasion or the excuse of a drink or treat. The strong impression on my mind, and I think it would be the impression of any honest jury, is that the treats in question were just given in the common course of things as following a common custom. In the appropriate language already cited the Judge must satisfy himself whether the thing which was done was really done in so unusual and suspicious a way that he ought to impute to the person a criminal intention in doing it."

In the *Kingston case* (*ante* p. 623, s. c. 11 Can. L. J. 23), Richards, C.J., says: "The general practice which prevails here, amongst classes of persons many of whom are voters, of drinking in a friendly way when they meet, would require strong evidence of a very profuse expenditure of money in drinking, to induce a Judge to say that it

was corruptly done so as to make it bribery, or come within the meaning of 'treating' as a corrupt practice at the common law." The learned Chief Justice adds: "I must confess to have been very much embarrassed in coming to a conclusion in this matter satisfactory to myself. If it were not that I felt compelled to look upon this branch of the case in the nature of a penal proceeding, requiring that the petitioner should prove his allegations affirmatively by satisfactory evidence, and that he might have given further evidence to have repelled some of the suggestions in respondent's favor, if such suggestions were not reasonable ones, I should be bound to decide against the respondent; but looking at the whole case, I do not think I ought to do so. If it is found from experience that the provisions contained in the present laws now in force in the Dominion and in Ontario do not effectually put an end to corrupt practices at elections, and that in order to do so it will be necessary to bring candidates within the highly penal provisions of declaring them, when they violate the law, incapable of being elected or holding office for several years, Election Judges will probably find themselves compelled to take the same broad view of the evidence to sustain these highly penal charges that experience compelled committees of the House of Commons to take as to the evidence necessary to set aside an election."

In the *North Middlesex case* (*ante* p. 376, s. c. 12 Can. L. J. 15), the Chancellor says: "Then there is the custom of the country—not to be commended, but still to be taken into account—to take drink in the bar-rooms of taverns, and to do so in the shape of treating some or all of those assembled with them in the room—the 'crowd' as it is often called. . . . The respondent is a farmer, and has for the last sixteen years followed the business of a drover. He says that it is the practice of drovers to go to taverns as the best place for meeting with farmers and hearing of cattle; that such has been his practice, and that he has always been in the habit of treating at

taverns in the course of his business, and this is confirmed by the evidence of other witnesses. He states that when he became a candidate he canvassed personally through the riding, and went to the taverns as good places to meet with the electors ; that on these occasions he sometimes treated ; sometimes friends who were with him treated ; and the treating was sometimes by others who were not friends, and the treating was general to all who might happen to be present. As to its extent, he says it was much less than was his habit in the course of his business—not more, he says, than one-fifth as much. He denies emphatically that he treated with any view of influencing voters ; that he made no distinction as to whom he treated ; that he had not taken legal advice ; that he meant to obey the law ; and that he thought that in what he did he committed no infraction of the law.” The learned Chancellor continues : “ I think that the respondent, in doing what he did, was treading upon dangerous ground ; but before holding that his seat is thereby avoided and himself disqualified, I must be satisfied that what he did was done with a corrupt intent, and in judging of this the general habit of treating in the country, and the respondent’s own practice, may properly be considered. It seems all to come to this : treating is not *per se* a corrupt act. The intent of the act must be judged by all the circumstances by which it is attended. If in this case the evidence led me to the conclusion that the respondent did what he did in order to make for himself a reputation for good fellowship and hospitality, and thereby to influence electors to vote for him, I should incline to think it a species of bribery which would avoid the election at common law ; but upon a careful consideration of the evidence it does not lead me to that conclusion. There was nothing wrong in the eye of the law in the respondent making his canvass by meeting the electors at taverns, and he does not seem to have abused the occasions of so meeting them by seeking to obtain their votes by pampering their appetites for drink, or by other undue means.”

By section 98 of the Dominion Elections Act, 1874, it is enacted that "The offences of bribery, treating, or undue influence, or any of such offences, as defined by this or any other Act of the Parliament of Canada, shall be corrupt practices within the meaning of the provisions of this Act;" and by section 94 of this statute the offence of treating is thus defined: "Every candidate who corruptly, by himself or by or with any person, or by any other ways or means on his behalf, at any time either before or during any election, directly or indirectly gives or provides, or causes to be given or provided, or is accessory to the giving or providing, or pays wholly or in part any expenses incurred for any meat, drink, refreshment, or provision to or for any person, in order to be elected, or for being elected, or for the purpose of corruptly influencing such person or any other person to give or refrain from giving his vote at such election, shall be deemed guilty of the offence of treating." So that to make this offence a corrupt practice there must be the corrupt giving for the purpose of corruptly influencing. Treating is not in itself illegal, and in considering whether it is a corrupt practice or not, it is under the authorities proper to look at the habits of the man accused of the offence, and endeavor to ascertain his intention in the treating complained of. It is not to be inferred that the act is corrupt simply because an election is going on.

There is no doubt that with the agent Day treating was an ordinary act of everyday life. Whenever and wherever the occasion offered it was indulged in. He is described as a man who did not do much on the platform, but who was a powerful man outside. He appears to have thought that there was not much in himself to commend him to those he met, and at once he invariably turned to his potent friend the bar, and, by this more than questionable mode of procedure, sought to stimulate or form a friendship between himself and those he met. To this low conception of his own powers he added the view that those he met in his county were guided by a

standard no higher than his own, and he appears for over twenty years past to have successfully carried on this vile and degrading system of universal treating, which has been found to be so debauching in its effect throughout our Province. This man, who has been a candidate for various offices for the past twenty years, and has freely employed treating as an element in his canvass, becomes an agent of a candidate who no doubt uses him as a man whose influence, created by the use of liquor, will be sustained by the same means, the benefit of which will accrue to him in the election contest. This treating, if found in one not theretofore given to this vice, would have been sufficient to have avoided the election, but no doubt the respondent and his agent were informed of the decisions which sanctioned, under certain circumstances, a large amount of treating, and they acted on these cases, and I think are now entitled to shelter behind them. Although Arkell was apparently afraid of the consequences to himself that might arise from Day's treating, he never repudiated him as his agent. On one occasion the candidate and another, a friend sent by him, remonstrated with Day as to the probable consequences of his treating; but I cannot say that Day did more in the way of treating during than before the election, nor that he used this means of influence corruptly within the authorities. He employed this, as he ordinarily did, as his argument, and he did not use it more or differently one time from another. I think he went as far as he could go without bringing himself within the clauses of the Act which avoid elections for corrupt acts. I cannot say either that there has been "any wilful offence" in the giving, or causing to be given, to any voter on the nomination day or day of polling, on account of such voter having voted or being about to vote, any meat, drink, or refreshment.

What was done by Day at the nomination cannot be said to have been done on account of a voter having voted. The act of treating on that day in order to affect the election must, under the latter portion of section 94,

be coupled in some manner with "such voter having voted or being about to vote." In no case has it been shown clearly to have been so. In the case of Peter Wooley, Day, to my mind, brought himself very nearly within the penal clauses of the Act. The promise of assistance made to Wooley was too vague for me to act upon, but the question of his voting was then brought up, and liquor was introduced, and Day then obtained from him a promise in connection with his voting. If the matter was *res integra*, I should have found this election avoided by the acts of Day. I cannot, however, do so in view of the decisions in this country and in England. I am bound to follow these authorities, and must leave it to those who think themselves aggrieved by my finding to proceed by appeal and have the matter set aside.

I feel that as the law stands at present a great inducement is held out to would-be candidates to look out in each constituency for men who are habitual drinkers, to win them to their side, and then to send them out to carry on the canvass by systematic treating, and thus to cause the electioneering of the country to depend to a great extent on the popularity aroused by these means rather than on the actual merits of the candidates, or the measures they advocate. The door is thus very widely opened to the introduction of drink as a means of quietly, yet surely, affecting the election. This would be prevented if I could have held that the paying for liquor supplied to a voter by a canvasser when engaged in canvassing his vote was a means of ingratiation or enticement, or of making himself popular, struck at by the Act, and by it made a corrupt practice.

Too much stress was laid in argument on the \$10 given to Day by Arkell. There was nothing unreasonable in this. It was more reasonable for Day to borrow this sum from his friend Arkell than that he should borrow from any person else when away from home, and much more reasonable to borrow \$10 than to run in debt at the various taverns and other places where he might be

for the three or four days he was absent from St. Thomas canvassing for the respondent.

I disposed of all the other charges on the trial of the case, and while not satisfied with the conduct of Day, I cannot, after a careful reperusal of the evidence, conclude that I would be justified in setting aside the election on account of what he had done.

As to the costs of these proceedings, I think I may well follow the rule laid down in these words in the *Carrickfergus case* (21 L. T. N. S. 356): "But when drink is once given, those who give or sanction it cannot know or form an opinion of the consequences to which it may lead. I think it should be discouraged, and that not only candidates but their over-zealous friends and partisans should be apprised of the risks they run, and of the consequences to which they expose the candidate, by such a practice, and that it might be attended with positive loss to him. Upon these grounds I think I should, in this case, do what I clearly have authority to do under the Act of Parliament, namely, refuse to give the respondent the costs of these proceedings." (s. c. 1 O'M. & H. 264).

I shall report accordingly to the Speaker.

(13 *Commons Journal*, 1879, p. 18.)

PRESCOTT.

BEFORE MR. JUSTICE ARMOUR.

L'ORIGINAL, 7th January and 19th February, 1879.

ALBERT HAGAR, *Petitioner*, v. FELIX ROUTHIER,
Respondent.*Voters entered on Voters' List in wrong capacity—Right to vote—Refusal to swear.*

The respondent was elected by four votes. At the election the names of twelve persons who were entered on the assessment roll as "free-holders" appeared on the voters' lists, owing to a printer's mistake, as "farmers' sons." Their votes were challenged at the poll, and they were required by the petitioner's scrutineers to take the farmers' sons' oath, which they refused. Subsequently they offered again to vote and to take the owners' oath, and the deputy returning officer, who was also clerk of the municipality, knowing them, gave them ballot papers and allowed them to vote.

Held, 1. That having been rightly entered on the assessment roll, the mistake as to their qualification on the voters' list did not disfranchise them.

2. That their refusal to take the farmers' sons' oath was not a refusal to take the oath required by law. A refusal to swear is where a voter refuses to take the oath appropriate to his proper description.
3. That having a right to vote, although they voted in a wrong capacity, their votes could not be struck off.

Seemle, That the provisions of the law as to how voters are to be entered on the voters' list in respect to their property, and as to the manner in which they are to vote, are directory.

The petition contained the usual charges of corrupt practices, and asked to have the election set aside on the ground that persons had been allowed to vote without the qualifications prescribed by law.

Mr. F. Osler for petitioner.

Mr. Peter O'Brien and Mr. Curran for respondent.

On the opening of the case the charges of corrupt practices were abandoned, and the election was attacked on the grounds set out in the judgment.

ARMOUR, J.—I do not know that there is any necessity for my retaining the case. I have listened attentively to the arguments on both sides. The subject matter of

dispute in this election case having been stated by one of the counsel on the previous occasion, I have since that time striven to make myself acquainted with the law upon the subject; and I therefore think it is just as well that I should dispose of the case now.

The facts are extremely simple. Some twelve persons were duly entered on the last revised assessment roll as assessed freeholders in respect of real property held by them, of sufficient value to entitle them to vote. From that assessment roll was taken, by the clerk of the township, a list of the voters who would be entitled according to it. In making out the copy for the purpose of having it printed, he set down correctly the names of these persons mentioned in the particulars, and described them therein as "owners," and set forth the property in respect of which they were assessed. The printer, it appears, made a mistake, entering opposite the name of each of these persons the word "do," which, referring to what went before, indicated that they should be designated as "farmers' sons." That printed copy was sent to the officials to whom by law the clerk of the municipality was obliged to send them; was the copy duly certified according to law; and was the copy deposited in the office of the clerk of the peace, from which copies were taken for the purposes of the voting of the various polling subdivisions.

At this election, at the polling subdivision number one, in the township of Alfred, the township clerk, the person who made out the voters' list for that township, was the deputy returning officer. These several persons came to that polling place. I do not think it is important whether they were each individually challenged, or were jointly challenged, and whether they were permitted to vote, or whether they were refused their votes, and the ground of challenge or refusal inserted. They came to vote, and they found themselves entered on the list as "farmers' sons." They were improperly entered. The only objection taken was that, as they were entered on

the list as "farmers' sons," they were not entitled to vote in any other capacity; and they must take the oath appropriate to a farmer's son, as if they were farmers' sons, as entered on the voters' list. They refused to take that oath; no other oath was required of them; and subsequently, having become excited no doubt by the dread of losing their franchise, they came back and insisted that their votes should be taken. The deputy returning officer knew them; knew that they were the persons named on the voters' list, and knew the mistake by reason of which they were sought to be disfranchised. They were permitted to vote. The question then comes to this: Had these persons a right to vote, entered as they were on the voters' list as farmers' sons?

My conclusion would be, that inasmuch as the majority was only four, and they were twelve, the election must have been affected by their voting. I do not think it is important to ascertain how they voted. Their voting must necessarily have affected the election; and if they had no right to vote, I think I ought to set the election aside. I think they were entitled to vote, and ought to have been allowed to vote. They did vote, being given ballots by the deputy returning officer: and I am called upon to say whether a mistake, such as was made on this list, ought to have disfranchised them: because, if they are to be disfranchised by reason of that, they had no right to vote at all, and the election ought to be set aside. I do not think the law is so absurd as to say that a man shall be disfranchised of his vote because of a mere mistake like this—because of the way in which he is set down on the voters' list. Unless the law contained a statement, that a person being set down in his wrong capacity, although fully identified, should not be entitled to vote, I think that such person should not be disfranchised.

I cannot but think that the provisions of the law, with regard to the manner in which the persons shall be entered on the voters' list, so far as the property is

concerned, and the manner in which they vote, are to be looked upon as directory. It would be a hardship indeed if a person, after these lists had been made out—if he had been on a sufficient time to entitle him to vote, and had paid his taxes—should find himself disfranchised by a mere mistake on the voters' list, caused either by accident, clerical error, or an error of the printer—an error which it might be said that the clerk of the township ought to have corrected. It would be a hard thing indeed to say that the law was so strict, that it disfranchised the person so situated, and compelled him to lose his vote. It is true that the statute requires these voters' lists to be published in a certain way, in order that the voters may see that they are properly entered upon these lists; but these men, some of them illiterate, all that they could reasonably ask to know would be whether they were on the voters' list. They find their names on the voters' list, and finding that, they would be satisfied. I think that the fact of the description "farmers' sons" being added to the names of these persons could not deprive them of their franchise. In a scrutiny, would their votes have been struck off? I think they would not. It does not matter how they voted, if they were found on a scrutiny to have a right to vote. Although they may have voted in a wrong capacity, or although they may have been down on the assessment roll by a wrong description, their votes would not have been struck off. I do not think I could strike these votes off on a scrutiny, had it been capable of being performed, when they voted in that way. I do not think I ought to avoid the election because these persons, who had a right to vote, did vote. I think the deputy returning officer would have done wisely to have given them ballots, marking on the poll book that the voters were objected to.

It is contended further on the part of the petitioner that after their having refused to swear, they were not, under the terms of the Act, entitled to come back and vote.

I do not take it that they have refused to take the oath which was the only oath that they could take. They refused to take the oath appropriate to the misdescription on the voters' list; they refused to take that oath, and I do not consider that a refusal to swear. A refusal to swear is where a person comes, being properly named in respect of real property upon the roll, under a proper description, and refuses to take such oath as is properly appropriate to his description. These persons did not refuse to take the oath, the only oath they could take; they refused to take the oath of farmers' sons, because they could not take it. I do not think that is a refusal to swear. I think that when they came back and voted they had a right to vote, and I do not think now that their votes can be struck off.

I think, therefore, the petition ought to be dismissed, and dismissed with costs.

(13 *Commons Journal*, 1879, p. 45.)

NORTH ONTARIO.

BEFORE MR. JUSTICE ARMOUR.

WHITBY, 30th, 31st January, 1st and 26th February, 1879.

WILLIAM HENRY GIBBS, *Petitioner*, v. GEORGE WHEELER,
Respondent.*Bribery—Treating—Undue influence—Law of agency—Hiring orators
and canvassers—Bribery of influence.*

The respondent canvassed a voter, who at the trial swore that after he had agreed to vote for him, the respondent promised to give the voter some work ; the respondent denied the promise.

Held, although the voter appeared to be a truthful witness, and was not shaken on cross-examination, that the promise of employment was not made out beyond all reasonable doubt.

The law of election agency is not capable of precise definition, but is a shifting elastic law, capable of being moulded from time to time to meet the inventions of those who in election matters seek to get rid of the consequences of their acts.

A room was procured at which private meetings were held of the friends of the respondent to promote his election—some of which meetings he attended. One W. attended these meetings, and was appointed to procure the vote of a certain voter who was absent from the riding. W. hired a vehicle to convey the voter to the poll.

Held, That W. was an agent of the respondent, and that his hiring such vehicle was a corrupt practice.

The respondent owed one M. a debt, which had been due for some time. He was sued for it about the time of the election, and was informed that his opponents were using the non-payment of it against him in the election. The respondent stated he would not pay it until after the election, as it might affect his election.

Held, That the promise to pay the debt was not made to procure votes, but to silence the hostile criticism, and was not therefore bribery.

Certain voters met at a tavern on polling day, and one B. said he did not know how to mark his ballot. One of the voters, after showing B. how to mark his ballot, according to the candidate he desired to vote for, treated.

Held, That the treating was not a violation of s. 94 of the Dominion Elections Act, 1874, nor a corrupt practice under s. 98 of the Act.

One M. canvassed a voter on polling day, and urged him to vote for the respondent, and, while canvassing, treated the voter four times ; the voter then went and voted.

Held, That the treating was for the purpose of corruptly influencing the voter to vote or refrain from voting at the election.

A scrutineer for the respondent had some whiskey with him on polling day, and treated the deputy returning officer, poll clerk, and another in the polling station.

Held, not a corrupt practice.

Certain supporters of the respondent met in a room over a tavern to promote the election of the respondent. Their meetings were presided

over by an agent of the respondent, and the respondent attended at least one of such meetings.

Held, That the persons who attended such meetings were agents of the respondent.

Two agents of the respondent gave a voter M. some whiskey on polling day, and took him in a boat to an island, where they stayed for some time. One of the agents then left, and the other sent M. to another part of the island for their coats. During M.'s absence the latter agent left the island with the boat, but M. got back in time to vote, being sent for by the opposite party.

Held, That the two agents were guilty of undue influence.

The respondent and one M. employed one H., a lawyer and professional public speaker, to address meetings in the respondent's interest, and promised to pay H.'s travelling expenses, if it were legal to do so.

Held (by the Supreme Court, reversing *Armour*, J.), that such a promise was not bribery (4 Sup. Ct. R. 430).

Held, *per Armour*, J., That the hiring of orators and canvassers at an election is bribery.

The petition contained the usual charges of corrupt practices.

Mr. D'Alton McCarthy, Q.C., and *Mr. T. G. Blackstock*, for petitioner.

Mr. J. K. Kerr, Q.C., and *Mr. Spragge*, for respondent.

The evidence affecting the election is sufficiently set out in the judgment, except as to the Hurd case, included in charges four and five. Hurd's evidence was to the effect that he was to address public meetings in the interest of the respondent, for which he claimed to be entitled to \$1,000. The respondent's evidence was that Hurd was to address such meetings if his (the respondent's) friends approved of him, and that he was to be paid his travelling expenses, if it was legal to do so.

ARMOUR, J.—At the close of the evidence all the charges in the particulars were abandoned, except those numbered respectively 1, 2, 4, 5, 6, 7, 10, 11, 13, 15, 18, and 20.

These were more or less strenuously relied on by the petitioner's counsel, and at the close of the able arguments addressed to me by the counsel for both parties, I deemed it better, as some of the charges affected the respondent personally, that I should reserve my decision until I had had an opportunity of carefully perusing the shorthand

notes of the evidence, and of examining and considering the authorities bearing upon the several charges relied on. Having now done so, I proceed to dispose of the charges in the order in which they were presented to me in argument.

The first charge was bribery by the respondent of one Thomas Ellis by the offer of employment to him.

The evidence given by Ellis, so far as material to be considered, was to the following effect: "He (the respondent) asked me if I would vote for him; he asked me 'How was my vote,' and I said, 'it was all right;' he said, 'I heard you were such a hot-headed Tory that there would be no use in speaking to you about it;' I said, 'I am not that hard;' says he, 'Well, how is it?' I said, 'I guess I will vote for the home man;' then he says, 'There are quite a few Conservatives around here who are going to support me; I have done them some favors, and,' said he, 'I am going to get out some logs this winter, and I will give you a job of getting out the logs.'" Ellis swore that he placed no dependence on the offer, nor did he afterwards receive or look for a job. The respondent denied that he ever made any such offer to Ellis, and also denied that on the occasion of canvassing Ellis for his vote there was any conversation about his giving Ellis employment. I think that Ellis was a truthful witness, and his evidence was not in any way shaken by cross-examination, nor was it at all affected by the witnesses called to impeach it; but I think it would be very dangerous to hold that a mere offer of so indefinite a character, made after the vote had been promised, and upon which the voter placed no dependence, and which might have been understood by him differently from the way in which it was intended, was, on the evidence before me, so assuredly positive as to compel me to find the respondent guilty of bribery. I think what was said by Mr. Baron Martin in the *Cheltenham case* (1 O'M. & H. 64) is peculiarly applicable: "Where the evidence as to bribery consists merely of offers or proposals to bribe, the

evidence required should be stronger than that with respect to bribery itself ; or where the alleged bribery is an offer of employment, it ought to be made out beyond all doubt, because when two people are talking of a thing which is not carried out, it may be that they honestly give their evidence, but one person understands what is said by another differently from what he intends it." I think that this charge was not made out beyond reasonable doubt, and I therefore determine that it was not proved.

The second charge was the hiring of a vehicle by one John Comley Widdifield, an agent of the respondent, to convey one Thomas Shean, a voter, to the poll. Shean was working at Bowmanville at the time of the election, and his wife and family were residing at Uxbridge village, where he had a vote, and Widdifield hired a vehicle from one Crawford, a livery stable keeper, and furnished it to Mrs. Shean, in order that she might go for her husband and bring him up to vote, which she accordingly did. It was attempted to be shown by the evidence of Widdifield that the vehicle in question was not "hired," and that the use of it was a free gift by Crawford ; but I find on the evidence that Widdifield hired it, and that it was the understanding of both Widdifield and Crawford at the time the vehicle was bespoken that it was to be paid for. It was also contended that the hiring of this vehicle was not within clause 96 of the Dominion Elections Act, 1874, but I see no possible room for such a contention.

The real contention, however, was that Widdifield was not an agent of the respondent. There seemed to be in the evidence upon this charge, as well as upon many others in which the question of agency occurs, a singular want of candor on the part of some of the witnesses, and a manifest desire to conceal the truth. It seemed almost impossible to get any one to admit that there was a committee-room anywhere, or that there was a committee anywhere, or that he was on the committee, or who was

on the committee. They seemed to think that the question of agency depended altogether upon whether there was a committee or not, or whether the person who was charged with having been an agent was one of such committee. Fortunately for the purity of elections the law of agency in election matters is not a hard and fast law, capable of precise definition; it is a shifting, elastic law, capable of being moulded from time to time to meet the shrewd and astute inventions of those who in such matters seek to get rid of the consequences of their acts.

In the *Wakefield case* (2 O'M. & H. 102), Mr. Justice Grove, after adverting to the ordinary law of principal and agent, and the construction to be put upon the authority of the agent according to that law, says: "But if that construction of agency were put upon acts done at elections, it would be almost impossible to prevent corruption. Accordingly a wider scope has been given to the term agency in election matters, and a candidate is responsible generally, you may say, for the deeds of those who, to his knowledge, for the purpose of promoting his election, canvass and do such other acts as may tend to promote his election, provided that the candidate or his authorized agents have reasonable knowledge that these persons are so acting with that object. I think it well that I should say in this respect that here it is almost impossible for any Judge to lay down such exact definitions and limits as shall meet every particular case; and it is extremely important that the public should know that, because were it otherwise—were I, for instance, on the present occasion to pretend to lay down an exact definition of what constituted agency at one election—possibly in some other case that particular definition might be evaded, although what came substantially to the same thing might have taken place. Happily there is sufficient elasticity in the law to prevent that being the case; and here, again, those who think that they can evade the law by just creeping out of the words which learned Judges use, or even which tribunals use, upon a matter of this

sort, which is partly law and partly fact, will generally find that they are very much mistaken. It is therefore well that it should be understood that it rests with the Judge not misapplying or straining the law, but applying the principles of the law to changed states of facts, to form his opinion as to whether there has or has not been what constitutes agency in these election matters. It is well that the public should know that they cannot evade this difficulty by merely getting, as they suppose, out of the technical meaning of certain words and phrases."

The conclusion of fact I draw from what has passed in this matter is that a room was procured in the village of Uxbridge, where both the respondent and Widdifield resided, with the knowledge and concurrence of the respondent, at which private meetings were held of the friends of the respondent, some of which he attended; that there was no nominated committee; that these meetings were held to the knowledge of the respondent for the sole purpose of promoting and furthering his election; that the persons who attended such meetings were only the well known supporters of the respondent, persons with whom he had made common cause for the purpose of securing his election, persons upon whom he relied, and by whose exertions he trusted to secure it. The fashion now adopted is to repudiate the name of committee-meeting for such a gathering as that described, and for each of the persons so meeting together to disclaim the name of a committee-man, but the persons who met together in this case did precisely what committee-men are appointed in such cases to do, and were just as much committee-men as if they had called themselves so. Widdifield attended some of these meetings, and so attended for the like purpose and in the same capacity as the other persons who attended the meetings. At one of these meetings at which Widdifield attended the procuring of Shean's vote was a subject of discussion, and to Widdifield was afterwards assigned the duty of procuring it. Applying, then, the law as established by numerous authorities to the state of

facts found by me upon the evidence, there can be no doubt whatever that Widdifield was an agent of the respondent, one for whose acts the respondent must be held responsible. I determine, therefore, that the second charge was proved.

The next charge was bribery in the respondent settling the claim of one Hugh Munro. Munro had a claim against the respondent for some \$30, which was of long standing, and when the respondent was nominated he thought "it was a good time to get him to pay his debts," and accordingly sued it. The claim was for timber used in the construction of a building and for the drawing of the timber—the respondent being the contractor, and one McKenzie his sub-contractor, for the construction of the building. The respondent had put off the payment of this claim from time to time, alleging that he wanted to see his sub-contractor, who, he said, was liable for a part of it, before settling it. After he was sued, and shortly before the election, he met one Brown, a son-in-law of Munro, who asked him why he did not settle Munro's claim, telling him that his enemies were making a handle of it, and that it was militating against him. The respondent explained to Brown why it had not been paid, and they then met Munro, when Brown said, "What about that debt; you are both here now." Munro said, "It is not paid yet." The respondent said, "I won't pay it till after the election, for it might affect the election." Other conversation followed not material to this inquiry. I am of the opinion that what was said by the respondent was in effect a promise that he would pay the claim after the election, that it was so understood, and that he intended it to be so understood by the persons to whom it was addressed; but I do not think that this promise was made to induce either Brown or Munro to vote for him, but for the purpose of silencing the hostile criticism that was being made upon his conduct in not paying Munro's claim, and the making of such a promise for such a purpose is not, in my opinion, under the circum-

stances of this case, bribery. I therefore determine that the seventh charge has not been proved.

The next charges were ten and eleven, the treating by James Cameron, by William Waddell, and Joseph Elliott on the polling day. Waddell and Elliott were voters at the polling subdivision which included and had its polling station in the village of Beaverton. James Cameron was a store-keeper and the postmaster at the same village. The facts were shortly these: On the morning of the polling day, and after the opening of the poll, Cameron met Waddell, who was his uncle, on the street, and asked him up to McKinnon's tavern to have a drink, where they found Joseph Elliott and one Neil Buchanan. Something was then said about voting, when Buchanan said he did not know how to mark his ballot. Cameron then took out of his pocket a blank ballot, and showed him how it ought to be marked, according as the party wished to vote for one candidate or the other. Cameron then said, "Come boys, let us have a drink, and then we will go up and burst their votes." The drink being duly disposed of, Cameron went to the poll, accompanied by Elliott and Buchanan. It was contended that the treating in question was a wilful offence against sec. 94 of the Dominion Elections Act (1874), and was a corrupt practice under sec. 98 of that Act. I cannot adopt that view, but feel bound to hold that the treating in this case was neither corrupt nor was it on account of the persons treated being about to vote. I therefore determine that these charges were not proved.

Charge thirteen was the treating by Archibald McKinnon of Thomas McCullough on the polling day. McKinnon was a blacksmith at Beaverton, and McCullough resided on Thorah Island, and was a voter at Beaverton. They were old friends, and whenever they met were in the habit of having a glass together. McCullough's account of what took place between them on polling day was not controverted, and I transcribe it: "I met McKinnon in the morning when I came over; he said, 'You have got

over ; did you come over to vote ? ' I said ' Yes ; ' he said, ' Who are you going to vote for ? ' I said, ' I do not know yet ; ' he said, ' Come over to McKinnon's and have a drink ; ' we went over and had a drink ; then he asked me to vote for Wheler, that Wheler was the best man ; that was when we were having a drink ; I said I would not know either of the candidates if they were in the room at the time. We sat down and talked awhile, and I told him I always voted on the other ticket—the Conservative—and he said, ' Come up and have another drink. ' We had another drink, and then sat down and talked awhile again ; he wanted, if I would not vote for Wheler, not to vote against him ; I told him I would not promise. We had another drink ; he still talked politics ; that was about all that was said, only that he did not want me to vote against his party ; we had four drinks altogether at this place. I went over and voted ; after that I saw McKinnon ; he said, ' You have done it ; ' I said, ' Done what ? ' ' Voted against me, ' he said. He said, ' You voted for Mr. Gibbs ; ' I said ' I did ; ' said he, ' I do not want to darken your doors while you live, and I don't want you to come into mine. ' " McKinnon denied that the drink was given for the purpose of influencing McCullough. I was at first disposed to think that the drink might be looked upon as a concomitant of, rather than an ingredient in, the persuasion exerted by McKinnon upon McCullough but a careful consideration of the evidence has compelled me to the conclusion that the drink was given for the purpose of corruptly influencing McCullough to vote or refrain from voting at the election. I will dispose of McKinnon's agency when I come to the disposal of charge twenty.

Charge fifteen was the treating by D. M. Card of one Thomas Fahey on polling day. Card was scrutineer for the respondent at No. 3 polling division of the township of Rama on the polling day. He took whiskey with him into the polling station and treated Thomas Fahey, who was the deputy returning officer there, and Edward

Fahey, who was the poll clerk, and another person named McDonald. Edward Fahey was a voter in Rama, at No. 2 polling division. I do not think this treating was corrupt, nor was it on account of the persons treated having voted or being about to vote. I therefore determine that this charge was not proved.

Charge eighteen is the hiring of a vehicle by Prosper A. Hurd to convey one George H. Neville, a voter, to the poll. Prosper A. Hurd was undoubtedly an agent of the respondent for the management of his election, and I find as a fact that he hired a vehicle from Charles McKenzie the day before polling day for the purpose of conveying George H. Neville to the poll; that both Prosper A. Hurd and Charles McKenzie understood that the vehicle hired was to be paid for, and \$3 was accordingly charged by McKenzie to the respondent for it. I find also that Charles McKenzie knew the purpose for which the vehicle was hired. I also find that Luther Hurd was sent by Prosper A. Hurd with the vehicle to convey Neville to the poll, which he accordingly did. McKenzie was recalled near the close of the trial, and swore that if he had known that this rig was going to be used for conveying voters he would not have charged for it, forgetting no doubt that he had previously sworn that he knew that the rig engaged on the 16th (the rig in question) was to go after Neville to bring him to vote. I cannot find on such testimony as this that no charge was ever intended to be made for the vehicle in question. I determine that this charge is proved.

Charge twenty was a charge of undue influence practised upon William Murray by George Ross and John Cameron. As I find the facts, they were shortly these: Murray was a voter at Beaverton, as was also his brother, Angus Murray. Early on the morning of the polling day Ross and Cameron went to the house of Angus Murray, having previously provided themselves with the requisite amount of whiskey, supplied to them by Angus McKinnon. They went to see that Angus Murray was all right,

and having ascertained that he was all right, and would vote for the respondent, they gave him a drink, and then proceeded to the house of William Murray, who lived near the lake. Finding that William Murray was all wrong, and was going to vote for the petitioner, they gave him a drink, and persuaded him to go with them to Thorah Island in Cameron's boat, Cameron telling him that he would be back time enough to vote. They all went to the island in the boat, and landed first at McCullough's Point, where Ross looked at some saw logs. They then proceeded to Middle Point, and landed at the south side of it. There Cameron and Murray left their coats, and leaving Ross and the boat there went for a walk over the island, the object of the walk being, no doubt, the detention of Murray on the island till near to the time when they must necessarily start back in order to vote. Returning from the walk they came to the north side of the Middle Point, where they found the boat; then Cameron sent Murray across the point for their coats, and when he got Murray away he went off with the boat to Beaverton, leaving Murray there, and thinking no doubt that he had accomplished his purpose of preventing him from voting. Cameron says that when he started off with the boat he thought it was about four o'clock. Ross had previously gone across to Beaverton in the boat of one Warren, because, as he says, he was told that Cameron and Murray had got tired and gone back. Murray, however, did get back to vote close upon five o'clock, as he says a boat had been sent from Beaverton (no doubt by the opposite party) to fetch him.

Hearing the evidence given upon this charge, and seeing the bearing and demeanor of the witnesses, I could not resist the conclusion that Ross and Cameron had deliberately concocted the plan of getting Murray over to the island for the sole purpose of preventing him from voting.

The 95th clause of the Dominion Elections Act, 1874, provides that "every person who directly or indirectly, by himself or by any other person in his behalf . . .

by abduction, duress, or any fraudulent device or contrivance, impedes, prevents, or otherwise interferes with the free exercise of the franchise of any voter, or thereby compels, induces, or prevails upon any voter either to give or refrain from giving his vote at any election, shall be deemed to have been guilty of the offence of undue influence."

I think that Ross and Cameron did, by a fraudulent device and contrivance, impede, prevent, and interfere with the free exercise of the franchise of Murray, and were guilty of undue influence.

It was argued that inasmuch as Murray was ultimately able to exercise his franchise, and did so, the offence struck at by the Act was not committed, but I do not yield to this contention; his being able at last to exercise his franchise made it no less an offence in Ross and Cameron, by a fraudulent device or contrivance, to impede or interfere with the free exercise of it.

The question of the agency of Ross and Cameron and of Archibald McKinnon, remains to be considered.

What I have said on the subject of agency in dealing with charge three applies with equal force to the matter in hand.

What was done at Beaverton was almost precisely similar to what was done at Uxbridge village; private meetings were held here as there; they were held in a room in Angus McKinnon's hotel; the respondent attended at least one of these meetings; they were presided over by one George Bruce, an admitted agent of the respondent for the management of his election at Beaverton; they were held for the sole purpose of securing the respondent's election; the like persons in a like capacity and for a like purpose attended these meetings as the persons who attended the meetings at Uxbridge. All those who met together there were co-workers together for promoting the respondent's election, George Bruce being the chief. George Ross attended one of these meetings, John Cameron was at two of them, and Archibald

McKinnon was at one or two of them. McKinnon swore that he did not remember promising Bruce to see McCullough and try and get him to vote for Wheler, but he would not swear that that did not take place. I have little doubt that to Archibald McKinnon was assigned the duty of looking after McCullough on polling day. I have also little doubt that to Ross and Cameron was assigned the duty of looking after the two Murrays. Bruce swore that he understood on election day, not before, that Ross and Cameron were taking part for Wheler, and they did so, as far as appears, with his sanction.

I can come to no other conclusion on the evidence than that Archibald McKinnon, George Ross and John Cameron, were agents for the respondent. I determine, therefore, that charges thirteen and twenty were proved.

The only remaining charges are four, five and six, which were argued together, and which I will dispose of as they were argued. These were charges of bribery of Prosper A. Hurd (4), by the respondent (5), Thomas Paxton and (6) Joseph McClelland respectively; and in dealing with them it will be necessary for me to refer with some detail to the law as affecting the particular kind of bribery—bribery of influence—charged to have been committed.

The Dominion Elections Act, 1874, sec. 92, provides that the following persons shall be deemed guilty of bribery, and shall be punishable accordingly :

“(3). Every person who, directly or indirectly, by himself or by any other person on his behalf, makes any gift, loan, offer, promise, procurement, or agreement, as aforesaid, to or for any person in order to induce such person to procure or endeavor to procure the return of any person to serve in the House of Commons, or the vote of any voter at any election.”

This latter subsection (under which these charges are said to come) is a condensation of the two former subsections; and an application of the acts, therein referred to, to bribery or influence would, if amplified, form like them two clauses, and would read as follows: Every

person who, directly or indirectly, by himself or by any other person on his behalf, gives, lends, or agrees to give or lend, or agrees or promises any money or valuable consideration, or promises to procure, or to endeavor to procure, any money or valuable consideration to or for any person in order to induce such person to procure, or to endeavor to procure, the return of any person to serve in the House of Commons, or the vote of any voter at any election; and every person who directly or indirectly, by himself or by any other person on his behalf, gives or promises, or agrees to give or promise, or offers or promises, any office, place, or employment, or promises to procure, or to endeavor to procure, any office, place, or employment, to or for any person in order to induce such person to procure, or to endeavor to procure, the return of any person to serve in the House of Commons, or the vote of any voter at any election.

It will be thus seen that the bribery of influence is defined in the same way and by the very same words as the bribery of voters, and it follows that the law applicable to the one is equally applicable to the other. Of the two modes—bribery of votes, and bribery of influence—the latter is the more effectual and the more pernicious. It is the more effectual, because the briber of the voter cannot, by reason of the ballot, know whether the voter has carried out the compact, but the briber of the influence sees and knows whether the influence bribed has been exerted. It is the more pernicious because its effects are more extensive; the briber of the voter gets that vote alone, the briber of the influence gets, almost as a matter of course, the vote of the person whose influence is bribed; and also the votes of all those affected by his influence. The evidence in this case affords an illustration of this, if such were wanted. Luther Hurd swore that he supported the respondent through his father's influence, because he thought his father was going to be benefited by it. It also appears that the benefit to be derived by the father-in-law Hurd was placed before the son-in-law Neville as an inducement to support the respondent.

The amount promised, whether it be large or small, makes no difference in the offence ; it is as much bribery if one dollar was promised as it would be if a thousand were.

Mr. Justice Willes, in the *Coventry case* (20 L. T. N. S. 405), after quoting the same clauses in the Imperial Act as subsection 3, says : " Therefore anything, great or small, which is given to procure a vote, would be a bribe ; and if given to another to purchase his influence at the election, it unquestionably also would be a bribe, and would void the election. It would have been bribery in the case of the person who gave, and in the case of the person who received, the benefit ; and if Mr. Eaton had agreed to give Mr. Hill £5, I might say a farthing in point of law ; if he agreed to give him anything, if only a peppercorn, for the purpose of purchasing any influence which Mr. Hill had with the electors of Coventry, and of advancing Mr. Eaton's interest as a candidate at the election, it would have been bribery, and it would have avoided the election."

Nor does it make any difference under what name the promised money is to be paid, whether for speeches to be made, or for influence to be exerted in any other way, and whether for loss of time and inconvenience, or for travelling or other expenses, the law is equally violated in one case as in the others.

If A says to B, " If you will come and vote for me I will pay your travelling expenses in doing so ;" or if A says to B, " If you will come and endeavor to secure my return, I will pay your expenses in doing so," there can be no distinction in law between these proposals ; if the one is illegal so is the other. The former has been determined to be bribery by the House of Lords in *Cooper v. Slade* (6 H. L. Cas. 746) ; the reasoning and result of that case apply with equal force to the latter, and the latter must be bribery too.

The payment of orators was likened in the argument to the payment of canvassers, and it was contended that

payment of canvassers was legal in Canada because it was legal in England; but this by no means follows. In England counsel are retained, attorneys and solicitors are employed, agents, canvassers, messengers, and watchers are hired, committees are furnished with refreshments, and enough money is spent in this and similar ways at an election there to corrupt and demoralize any constituency here if spent in a like manner.

I need only refer to the expenditure in the Westminster election of £9,000 sterling, which was held not illegal; and to the Argyleshire election but the other day, reported to have cost £16,000 sterling.

These expenditures, for the purposes I have above referred to, have been held in England to be authorized under the terms of the proviso appended to the enactment against bribery in the C. P. P. Act, 1854: "Provided always that the aforesaid enactment shall not extend or be construed to extend to any money paid or agreed to be paid for or on account of any legal expenses *bona fide* incurred at or concerning any election." And it has been there held that but for this proviso the payment of canvassers would be illegal. The framers of our Act, no doubt with the view of preventing such enormous expenditure as had been held in England to be legal under the terms of the proviso in the Imperial Act, discarded that proviso, and adopted the following: "Provided always that the actual personal expenses of any candidate, his expenses for actual professional services performed, and *bona fide* payments for the fair cost of printing and advertising, shall be held to be expenses lawfully incurred, and the payment thereof shall not be a contravention of this Act;" and in order that no illegal payments should creep in under the words "personal expenses," they were careful to define them by providing that "the words 'personal expenses,' as used in this Act, with respect to the expenditure of any candidate in relation to the election, shall include the reasonable travelling expenses of such candidate, and the

reasonable expenses of his living at hotels or elsewhere, for the purpose of and in relation to such election."

It will thus be seen how much more limited the expenditure must be under this proviso than under that in the Imperial Act.

It may be that this proviso in our Act does not cover every expenditure that may legally be made, but if any expenditure made outside of that permitted by the proviso should happen to be covered by the express words of the clauses relating to bribery, such expenditure will inevitably amount to bribery.

The hiring of orators and of canvassers is, in my opinion, outside of what is permitted by the proviso, and is within the very words of subsection 3, and is therefore bribery.

I am told that such hiring has been permitted as legal in other Provinces. The decisions in other Provinces do not bind me, and as in my opinion it is illegal, I shall hold to that opinion until a Court whose authority I am bound to submit to shall determine that the law may be violated in this way, and that bribery may assume this garb with impunity. Holding the view of the law which I have expressed, it is quite unnecessary for me to determine which was the true arrangement with Hurd—that deposed to by the respondent or that deposed to by Hurd. In my opinion they were both equally illegal. Mr. Paxton was in court, subpoenaed as a witness by the petitioner, and might have been called by either party, but neither saw fit to call him. His evidence would undoubtedly have furnished important materials upon which to come to a proper conclusion as to the true arrangement. Assuming then that the arrangement with Hurd, deposed to by the respondent, was the true arrangement, I find that such arrangement was so made by the respondent to induce Hurd to endeavor to secure the return of the respondent to serve in the House of Commons, and that the respondent was thereby guilty of bribery within subsection 3 of section 92 of the Dominion Elections Act of 1874.

I therefore determine that charge four was proved. I also determine that charge five was, and charge six was not, proved.*

I further determine that the said election was void, and that the same must be set aside with costs, to be paid by the respondent to the petitioner, and shall certify the same to the Speaker of the House of Commons, and shall report to him as required by law.

From Mr. Justice Armour's judgment on charges four and five, the respondent appealed to the Supreme Court of Canada, and the appeal was allowed with costs; the Supreme Court holding, on the evidence, that the respondent only agreed to pay Hurd's travelling expenses if it was legal for him to do so, and that such a promise was not a violation of subsec. 3 of sec. 92 of the Dominion Elections Act, 1874 (4 Sup. Ct. R. 430).

(15 *Commons Journal*, 1881, p. 2).

* The learned Judge referred to the case of *Wood v. Lycett*, reported in the *London Times* of 29th January, 1879, the facts of which were as follows: Plaintiff and defendant were candidatee for Worcester at the then last election. Plaintiff agreed to retire and to assist the defendant, for which he was to receive £70 for his assistance and certain sums spent by him in payment of canvassers and other election expenses. At the close of the evidence, Baron Huddleston said that both parties were guilty of a misdemeanor in entering into such a transaction, which was clearly a corrupt payment. As to the other items, he held that not having been made through the election agent, and the bills for the same not having been sent in within the month after the election, they were not recoverable.

CORNWALL (3).

BEFORE MR. JUSTICE ARMOUR.

CORNWALL, 17th and 18th June, 3rd October, 15th December, 1879.

DONALD BAN MACLENNAN, *Petitioner*, v. DARBYBERGIN, *Respondent*.

Commission to examine witnesses in a foreign country—Disqualification of petitioner—Agents and sub-agents—Colorable purchases—Bribery—Costs.

A Commission to examine witnesses in a foreign country may be issued in the case of the trial of an election petition.

In order to disqualify the petitioner acting as such, the respondent offered to prove (1) that the petitioner had been reported by the Judge trying a former election petition as guilty of corrupt practices; (2) that the petitioner had in fact been guilty of corrupt practices at such election; and (3) that he had been guilty of corrupt practices at the election in question.

Held, that such evidence, if offered, would not disqualify the petitioner as such.

Held, further, that as the petitioner did not claim the seat, evidence could not be gone into for the purpose of personally disqualifying him.

One C. canvassed for the respondent, and told the respondent he was going to support him, and the respondent expected and understood that he would do everything he could for him legitimately. C. did not attend any meetings of the respondent's committees, and made no returns of his canvassing.

Held, on the evidence set out in the judgment, that C. was an agent of the respondent for the purposes of the election.

The agent, C., employed one W. to go with him on the evening before the election to several electors, from whom both C. and W. made colorable purchases, but with the corrupt intention of inducing the persons from whom the purchases were made to vote or refrain from voting at the election.

Held, that C. and W. were guilty of bribery, and that the election was avoided in consequence of their corrupt acts.

The petitioner was allowed his costs, but not the costs of the charges which he failed to establish.

The petition contained the usual charges of corrupt practices.

During the proceedings at the trial it appeared that a necessary and material witness for the petitioner had removed to the State of Michigan, whereupon the learned Judge adjourned the trial so that an application might be made before him in Chambers for the issue of a commission. The learned Judge afterwards, on the authority of the *Wallingford case* (1 O'M. & H. 57) and *Staley-*

bridge case (19 L. T. N. S. 703), made the order for a Commission. (See the report of the application, 8 P. R. 64).

Mr. Bethune, Q.C., and Mr. Riddell, for petitioner.

Mr. Hector Cameron, Q.C., and Mr. Bergin, for respondent.

ARMOUR, J.—The counsel for the respondent at the commencement of the trial took the objection that I had no jurisdiction to try this cause, which objection I overruled.

He also at the same time offered to prove that the petitioner had been reported to the Speaker of the House of Commons as having been guilty of corrupt practices at the said election for the said electoral district, held on the 29th of January, 1874, by the Judge who tried a petition in respect of such last mentioned election, and to prove that the petitioner had in fact been guilty of corrupt practices at that election; and had also been guilty of corrupt practices at the election for the said electoral district, held on the 17th of September, 1878; and contended that such proof being given, disqualified the petitioner from being a petitioner in this cause.

I rejected the proof so offered, holding that if given it would not have the effect contended for: *South Huron case* (29 C. P. 301).

He also at the close of the petitioner's case offered to prove the same facts for the purpose of disqualifying the petitioner; but inasmuch as the petitioner did not claim the seat, I considered such proof irrelevant, and refused to receive it.

[The learned Judge here referred to charges on which evidence had been given, but which he held not proved].

The remaining charges relied on by the petitioner's counsel must be determined by the construction to be put upon the acts of George Crites and Henry White on the night before the election, and by the responsibility of the respondent for such acts.

George Crites describes the manner of his becoming acquainted with Henry White and what transpired before his introduction to him, rendering such introduction necessary, and the circumstances attending such introduction.

[The learned Judge here read his notes of the evidence, the substance of which is hereinafter referred to].

Henry White was a drover, who lived close to Northfield, and happened to go down to Alguire's Hotel the evening of the 16th of September. He did not know Crites wanted to see him. He didn't know Crites. Mr. Fulton introduced him to Crites, and he gave him a package, telling him that he got it at Ottawa Hotel. White opened the package and found \$45.00 in it, but no letter. He put the money in his pocket with his other money. He didn't ask Crites who it was from, nor for any explanation about it. He was not surprised at receiving it, nor did he think it strange. He made no remark about it. He had no idea who sent it to him, nor for what purpose, nor that it was to be used in the election.

After White and Crites became acquainted, they got to know from each other that they were both supporters of Dr. Bergin, the respondent, and they took tea together at Alguire's.

Crites found out that Dr. Mattice and Henry Sandfield Macdonald were at Northfield; and he and White both concluded from that fact, and from the knowledge they said they had of their ways, and of the corruptibility of the voters in that locality, that they were there for the purpose of buying votes, and Crites said it was his business to watch them. White said that he had got a message from Mr. Moss, for whom he had been buying stock, to drive the stock into Northfield in the morning, and he would go with him. They went together. They went first to William Bender's. White paid Philip Bender \$2.00 to help to drive stock next day, a service Bender did not perform; and Crites bought fifty pounds of butter

from him at 16 cts. a pound, and paid him the price, \$8.00, which butter Bender afterwards delivered. They next visited Samuel Bender, from whom White bought a sheep, which Bender said was worth \$3.25, for which White paid him \$5.00. White swore it was worth \$5.00. And Crites bought 25 lbs. of butter to be afterwards delivered, but which never was, on account of which he paid \$2.00. They next visited David Loucks, from whom White bought a cow for \$25.00, and paid \$6.00 on account. The cow was delivered next morning, but she got away again and went home, and White never got her. They next visited George Bender. White had previously bought sheep from this Bender, for which he was to pay \$10.75 ; and according to Bender's account, he told him that night that if he would vote he would give him \$14.00 for them. White denied this, but admitted paying \$4.00 on account of the sheep that night. They next went to William Arbuthnot's, Crites stayed on the road, and White went into the house. He gave Arbuthnot \$4.00, he said, on account of stock, which he got next morning. Arbuthnot said he gave it to get him out to vote. They went to Jas. McBride's, after which Crites went home, leaving White to pursue his journey alone. He called on James T. Wesley, and paid him \$5.00 on account of a cow he had bought from him for \$20.00. White took the cow about four weeks after, and paid the balance. He visited Aaron Wesley, from whom some time previously he had bought sheep for \$14.00, and had paid \$4.00 on account, and according to Wesley's account, agreed to give him \$2.00 more on the sheep if he would vote for the respondent. This White denied. White bought a heifer from Alpheus Runions, whom he found at a paring bee that night at Markle's, for \$12.00, and paid him \$4.00 on account. Runions never got the balance, nor White the heifer. White also met James Runions at the paring bee, and from him he bought two lambs at \$4.00 each. This took place about midnight.

I have carefully considered the evidence of Crites and White above referred to, and, reading it with the other evidence adduced, I have come to the following conclusions of fact :

That Crites went to Northfield on the evening of the 16th September, for the purpose of taking to White the package of money left at the Ottawa Hotel. That Crites knew when he got the package that it contained money that was being sent to White to be used corruptly at the election. That he delivered the money to White with the knowledge and intention that it would be so used. That White so used the whole or part of it, and that Crites was present and assenting to a part of it being so used. That the purchases, promises and payments made by White on that night were made and paid by him with the corrupt intention of inducing the persons, from whom and to whom they were made, to vote or refrain from voting at the election, and that the said White was therefore guilty of bribery.

That the purchases and payments made by Crites on that night were made by him, and paid by him, with the corrupt intention of inducing the persons from whom and to whom they were made to vote or refrain from voting at the election, and that the said Crites was thereby guilty of bribery.

The only remaining question is, was Crites a person for whose acts the respondent must be held responsible? If he was such a person, then the respondent must be also held responsible for the acts of White—for Crites employed him. See the *Bewdley case* (1 O'M. & H. 18).

I extract the evidence bearing upon the question of Crites' agency. Crites said: "I took part in the election on the Doctor's side. . . . I canvassed for about a week. I was almost in every part of the township. I had business of my own, and as I met parties I spoke in favor of the Doctor. I saw the Doctor, but did not converse with him. I cannot say whether he knew I was canvassing. He did not meet me out canvassing. I may have passed

him on the street ; I gave him no account of the progress I made. I may have told him so and so was going against him. I did not tell him to see any particular person." James Kirkpatrick, secretary of the Conservative Association, said : " I understood that Crites was a supporter of the Doctor's. I did not think that he was doing more than a hundred others. I had no communication with him about what he was to do. He made no returns ; we had no regular returns. He never attended a meeting, or gave any information. . . . I am sure that he never attended a committee meeting at all ; I attended every meeting regularly. There would be a couple of dozen at the meeting. I knew that he had been canvassing like others. I would have noticed him had he been present. . . . There were a great many others who actively supported us that did not come at all. He was not canvassing regularly. We did not furnish books to anybody for that purpose. I know people who were more active than he. . . . I know that Crites supported the Doctor, but he was not canvassing regularly. I suppose there were about one hundred canvassing the same way as he was. He was not employed by the committee to go around. . . . Of my own knowledge I do not know of any one Crites canvassed. I suppose he was canvassing, asking people as he happened to meet them for their votes. I knew that he was always an active man in elections ; I mean that he is a man who always works hard during an election ; he did in this case as in others. He took no part so far as active co-operation at the meetings is concerned ; he never attended any of the meetings. I knew he was a Conservative, and took for granted that he was supporting the Doctor."

The respondent said : " I was not certain till a short time before the election what course George Crites would take, knowing his warm personal friendship for Mr. MacLennan on the one hand, and his strong political feeling the other way. I met him, and he told me he was going to support me. I think this was after the writ issued,

but before nomination. I do not think I told him I hoped he would do all he could for me ; I did not point out anything he could do for me in particular. Of course, when I asked a man for his support, and he promised to give it to me, I expected and understood he would do everything he could for me legitimately—this applies to Crites individually. . . . I was not aware of George Crites going out to the west side of the township on the night of the 16th of September, nor do I know it now. I think I knew at the time of the nomination that Crites was a supporter of mine, and I believe he is a man who would do all that he could once that he took sides.”

I had occasion in the *North Ontario Election case* (*ante* p. 785) to express my views at some length, supporting them by authority, on the question of agency as applicable to parliamentary elections. And it is, therefore, needless for me to do more than refer to that case, and to say that, applying the views that I then expressed to the present case, I am compelled to the conclusion that I must, upon the evidence here set out, hold Crites to have been a person for whose acts, in relation to this election, the respondent must be held responsible.

I find, therefore, these charges proved. And I determine that the election and the return of the respondent are void.

The petitioner will get his costs ; but he will tax no costs in respect of the charges which he has failed to establish.

(14 *Commons Journal*, 1880, p. 2).

DIGEST OF CASES.

ADMISSIONS.—(1.) Of Bribery.—

1. The respondent, a week before the trial, served a notice on the petitioner admitting bribery by one of his agents, and notifying the petitioner not to incur further costs. At the trial the respondent, pursuant to the notice, gave evidence of bribery by an agent, which the Court held sufficient to avoid the election. The petitioner then contended that he had a right to show that corrupt practices had extensively prevailed, and that the respondent had been personally guilty of corrupt practices. *Held*, that the functions of the Court were judicial and not inquisitorial, and that no further evidence should be received on the issue as to the avoidance of the election on account of bribery by agents. But if incidentally it should appear, in the inquiry as to the personal charges against the respondent, that corrupt practices extensively prevailed, the same would be certified in the report to the Speaker. *West Northumberland*, 562.

2. Before the trial the respondent served a notice upon the petitioner, admitting that the election must be avoided on the ground of bribery by an agent without his knowledge or consent. Such admission was acted upon at the trial, and the election avoided accordingly. *North Simcoe*, 624.

— (2.) Of Counsel.—1. The admission of counsel in open court, — that the giving of \$2 to a voter by an agent of the respondent, after such voter had voted, such voter admitting that he did not know why the \$2 was given to him, was bribery,—acted upon, and the election avoided. *Carleton*, 6.

2. The respondent had a majority of 261 votes at the election, and at the trial his counsel admitted that there was evidence which would have the effect of avoiding the elec-

tion under R. S. O., c. 10, s. 159; and the Court, on such admission, declared the election void. *Dufferin*, 530.

See also pp. 45, 199, 203.

V AGENCY.—1. To sustain the relation of agency, the petitioner must show some recognition by the candidate of a voluntary agent's services. The *Westminster* case (1 O'M. & H. 89) as to agency followed. *Welland*, 47.

2. Agency in election matters is a result of law to be drawn from the facts of the case, and the acts of the individuals. *East Peterboro*, 245.

3. Acts of agency and the decisions bearing thereon, discussed. *North Ontario*, 304.

4. The Parliamentary law of agency is a special law, and is different from the ordinary law of agency. In Parliamentary elections the principal is liable for all acts of his agent, even where such acts are done contrary to the express instructions of such principal. *Cornwall*, 547.

5. Mere canvassing of itself does not prove agency, but it tends to prove it. A number of acts, no one of which might in itself be conclusive proof of agency, may, when taken together, amount to proof of such agency. *Ibid*.

6. If a candidate in good faith undertakes the duties which his agent might undertake, the acts of a few zealous political friends in canvassing for him, introducing him to electors, attending public meetings and advocating his election, or bringing voters to the poll, would not make such candidate responsible for prohibited acts contrary to his publicly declared will and wishes, and without his knowledge and consent. *South Norfolk*, 660.

7. Remarks on the evidence of agency. *Ibid*.

8. The law of election agency is not capable of precise definition, but is a shifting elastic law, capable of being moulded from time to time to meet the inventions of those who in election matters seek to get rid of the consequences of their acts. *North Ontario*, 785.

✓ **AGENTS.**—(1.) **Generally.**—1. When a candidate puts money into the hands of his agent, and exercises no supervision over the way in which the agent is spending that money, but accredits and trusts him, and leaves him the power of spending the money, although he may have given directions that none of the money should be improperly spent, there is such an agency established that the candidate is liable to the fullest extent not only for what that agent may do, but also for what all those whom that agent employs may do. *South Grey*, 52.

2. Evidence was given to show that certain parties had attended meetings with the respondent and canvassed for him, and had performed other acts of alleged agency, as set out in the evidence. *Held*, that the acts of alleged agency relied on in the evidence were not sufficient to constitute such parties the agents of the respondent. *North York*, 63.

3. Money was paid by an agent of the respondent (\$7 each) to certain voters for canvassing, they observing that "a little money in election time was allowed for knocking around," which observation the agent considered "going about to solicit votes." The agent denied it was paid with any corrupt intent, although his evidence was not satisfactory. The voters swore the money was paid to their wives, and the agent was not recalled to explain it. *Held*, that although such payment might be open to an unfavorable interpretation, it was not, according to the evidence, inconsistent with being made without any improper motive. *West Toronto*, 97.

4. Observations on the reasons why candidates should be held liable for acts done by their agents. The

Taunton case (1 O'M. & H. 184) approved. *Ibid*.

5. A witness stated that he had asked the people in his neighborhood to vote for the respondent, had attended a meeting of the respondent's friends, and made arrangements for bringing up voters on polling day, and had a team out on polling day. *Held*, that the evidence of his being an agent of the respondent was not sufficient. *East Peterboro*, 245.

6. One C. accompanied the respondent when going to a public meeting, and canvassed at some houses. On the journey, the respondent cautioned C. not to treat, nor do anything to compromise him or avoid the election. The respondent's election agent paid for C.'s meals at the place where the meeting was held. *Held*, that the evidence showed that the respondent had availed himself of C.'s services, and was therefore responsible for his acts. *Ibid*.

7. One S., who desired nomination as a candidate by a Reform Convention, was not nominated, and thereupon, from hostility to the convention and its nominee, opposed the candidate of the convention, which thereby had the effect of supporting the respondent. At the close of the poll, the respondent publicly thanked S. for being instrumental in bringing about his election. S. owned a shop and tavern, but the license for the latter was in his clerk's name; and during the polling hours on polling day spirituous liquors were sold and given in the shop and tavern. *Held*, that what was done by S. at the election was in pursuance of a hostile feeling against the convention and its candidate, and did not constitute him an agent of the respondent. *Cardwell*, 269.

8. One M., the reeve of a township, exerted himself strongly in favor of the respondent, to whom he was politically opposed, and against the other candidate, and attended meetings where the respondent was, and spoke in his favor. The reason for his supporting the respondent and opposing the other (ministerial) candidate, with whom

he was politically in accord, was, that the ministry of the day had separated the township of which he was reeve from the riding. The respondent asked M. to attend a public meeting, which he did; and at another meeting which he attended, M. stated (but not in the respondent's hearing) that he was acting there on the respondent's behalf. M. was once in the respondent's committee-room, and signed and circulated circulars issued by the respondent's friends. *Held*, that the question of agency being one of intent, the respondent, under the circumstances, never conferred upon M. the authority, nor did M. accept the delegation, of an agent for the purposes of the election. *North Grey*, 362.

9. Persons who canvassed and went to meetings with the respondent, and attended meetings to promote the election, at which meetings the respondent attended; and persons who canvassed with and introduced voters to the respondent, called meetings and appointed canvassers, and did other acts to further the election, and examined the results of the canvass, were held to be agents of the respondent; and corrupt practices committed by them, and by sub-agents appointed by them, avoided the election. *Cornwall*, 547.

10. The respondent in his evidence stated that he objected to committees; that he knew certain persons were his supporters, and believed they did their best for him, but he did not personally know that they acted for him. Other evidence showed that these persons took part in the election on behalf of the respondent; some spoke for him at one of his meetings; and one of them stated that he and some of the others canvassed for the respondent, and that he gave the respondent to understand he was taking part in the election for him. *Held*, that as it did not appear that any one of these persons was authorized by the respondent to represent him, and as they did not claim to have any such authority from him, but supported the respondent as the candidate of their party, the said

persons were not agents of the respondent for the purposes of the election. *South Norfolk*, 660.

11. *Semble*, if a candidate who had appointed no agents was aware that some of his supporters were systematically working for him, and by any act, or forbearance, could be fairly deemed to recognize and adopt their proceedings, he would make them his agents. *Ibid*.

12. One P., a tavern-keeper, took the petitioner's side at the election and at a meeting called by the petitioner, at which he was appointed chairman. Notices of this meeting were sent by the petitioner to P. to distribute, some of which P. put up at his house and some he sent to other places. On polling day P. desired to give a free dinner to some of the petitioner's voters, and asked the petitioner if he might do so. The petitioner did not approve of it in case it should interfere with his election, and warned P. that although he was not his (petitioner's) agent, he would rather he should not do it. P., notwithstanding this, paid for free dinners to 40 of the petitioner's voters. *Held*, by the Court of Queen's Bench (affirming *Wilson*, J.), that P. was not an agent of the petitioner. *North Victoria* (2), 671.

13. A year before the election the respondent paid part of the charges of a lawyer retained by one O. to attend the revision of the assessment rolls. O. at the time of the election attended one of the respondent's meetings, at which he stated that his own mind was not made up, but he urged that the respondent ought to have the support of the voters, he being a local man; and in three or four instances O. asked voters to vote for the respondent. The respondent and his friends distrusted O., and in no way recognized him as acting with them. *Held*, that O. was not an agent of the respondent for the purposes of the election. *Hulton*, 736.

14. One C. canvassed for the respondent, and told the respondent he was going to support him, and the respondent expected and understood that he would do everything

he could for him legitimately. C. did not attend any meetings of the respondent's committees, and made no returns of his canvassing. *Held*, on the evidence set out in the judgment, that C. was an agent of the respondent for the purposes of the election. *Cornwall* (3), 803.

— (2.) **Committees.** — 1. One M. was a member of a township committee, organized by direction of the convention which nominated the respondent, and the work of the election was put into the hands of these township committees. M. canvassed his school section, and had a voters' list, which was taken from him by the committee on the allegation that he was not doing much. The respondent never asked M. to work for him, but M. asked the respondent what success he had. The respondent had no one acting for him except these committees and some volunteers, and he never objected to the aid they were giving him, nor did he repudiate their services. *Held*, on the evidence, that the respondent was responsible for these committees, and that M., as a member of one of such committees, was an agent of the respondent. *North Ontario*, 304.

2. About a dozen of the electors met some time before the election and nominated the respondent as the candidate who should contest the election in the interest of the political party to which they belonged. The respondent accepted and acted upon the nomination. They met occasionally for the purpose of promoting the respondent's election, procured voters' lists, canvassed voters, and got reports on which they estimated their chances of success. *Held*, that if they did not style themselves a committee, they had assumed the functions which usually devolve upon such bodies. *North Wentworth*, 343.

3. The respondent was nominated by a Conservative association, and he accepted the nomination. The delegates to the association were to do all they could to secure his election. A committee was appointed in O. to canvass the town, and a committee-room was engaged and

paid for by the association, voters' lists were procured and used as canvassing books, and members were appointed to canvass parts of the town, and reports were made to the committee of the result of the canvassing. The respondent, who resided at W., did not attend the meetings, but knew they were canvassing for him, and gave them blank appointments of scrutineers to fill up, which they did, but the respondent did not know who composed the committee. *Held*, that the respondent, by authorizing such committee at O. to appoint scrutineers, made them his special agents for that particular matter and for that occasion only, and did not adopt them as his general agents for all the purposes of the election. *South Ontario*, 420.

4. One T., a member of such committee, canvassed actively for the respondent and to his knowledge, and on the nomination day attended a meeting of the respondent's friends in W., at which the respondent was present, and at which arrangements were made about canvassing and getting out votes, and generally about the election. *Held*, by the Court of Appeal (*Wilson, J., dubitante*), that T. was an agent of the respondent for the purposes of the election. *Ibid*.

5. One G., a member of the same committee, had a voters' list, and canvassed for the respondent, and stated he had no doubt the respondent expected him to vote and work for him. *Held*, that G. was not an agent of the respondent. *Ibid*.

6. The committee at the town of W., having been recognized and attended by the respondent, were held to be his agents. *Ibid*.

7. One B. was a member of the committee at W. for the respondent's election, canvassed for him, and met him at the committee-rooms once or twice. B. was also appointed in writing by the respondent to act as scrutineer for him on the polling day, and during polling hours gave whiskey to the Deputy Returning Officer in the polling booth. *Held*, that B., while acting as such scrutineer, was not acting

in his former capacity as committee-man or agent of the respondent, and that his appointment as scrutineer did not empower him to do an act of treating so as to make the respondent answerable for it. *Ibid.*

8. If a meeting of electors assembles and has the sanction of the candidate, such candidate is responsible for its acts and the acts of the agents appointed by it. *Cornwall*, 547.

9. But where the meeting is large, then all present cannot be considered as agents; only those to whom certain duties, either as a committee or as individual canvassers, are assigned. *Ibid.*

10. The respondent nominated no committees to promote his election; but he was aware that committees were acting for him in each municipality. On one occasion he went to the door of one of the committee-rooms, and left some printed bills to be distributed. One P., who attended the meetings of this committee, and said he was considered on the committee, committed an act of bribery. *Held*, that the committee were agents of the respondent, that P. was a member of the committee; and an act of bribery having been committed by him, the election was avoided. *East Northumberland*, 577.

11. A room was procured at which private meetings were held of the friends of the respondent to promote his election—some of which meetings he attended. One W. attended these meetings, and was appointed to procure the vote of a certain voter who was absent from the riding. W. hired a vehicle to convey the voter to the poll. *Held*, that W. was an agent of the respondent, and that his hiring such vehicle was a corrupt practice. *North Ontario*, 785.

12. Certain supporters of the respondent met in a room over a tavern to promote the election of the respondent. Their meetings were presided over by an agent of the respondent, and the respondent attended at least one of such meetings. *Held*, that the persons who attended such meetings were agents of the respondent. *Ibid.*

— (3.) Political Associations.—

1. The delegates to a political convention assembled for the purpose of selecting a candidate, who never had intercourse with the candidate selected, and who never canvassed in his behalf, cannot be considered as agents for such candidate. *Weland* (2), 187.

2. Where a political organization, after nominating their candidate, divided into committees "to look after voters in the particular wards in which they resided;" and the respondent had not given authority to any member of such committees, nor to any canvasser, to canvass generally. *Held*, that one K., who was a member of the Committee for Ward No. 2, and who was alleged to have committed an act of bribery in Ward No. 6, having no authority to canvass in the latter ward, was an agent with limited authority to canvass in Ward No. 2 only, and therefore the respondent could not be made liable for his alleged acts. *London*, 214.

3. The fact of a political association putting forward and supporting a particular candidate does not make every member of the association his agent; but the candidate may so avail himself of their services in canvassing for him and promoting his election, as to make them his agents. *North Grey*, 362.

4. By the constitution of the Reform Association, each delegate to the convention was actively to promote the election of the candidate appointed by the convention. The respondent had himself been for six years a member of the association, and was familiar with its objects and constitution. He had also as a delegate acted and canvassed for other candidates in the promotion of their elections, and expected the like assistance from the present members of the Association, and to the perfection of that system as an electioneering agency, the respondent owed his election. *Held*, that the delegates to the association, acting as such in promoting the election of the respondent, were his agents, for whose acts he was responsible; and that an act of bribery

committed by one R., a delegate to such association, and who canvassed and otherwise acted for the respondent, avoided the election. *East Northumberland*, 387.

— (4.) **Sub-Agents.**—1. The respondent gave to one H. some canvassing books, with directions to put them into good hands to be selected by him for canvassing. H. gave one of the books to B., a tavern-keeper, and B. canvassed for the respondent. B. was found guilty of a corrupt practice in keeping that part of his tavern wherein liquors were kept in store, so open that persons could and did enter the store-room and drink spirituous liquors there during polling hours on the day of election. *Held*, that H. was specially authorized by the respondent to appoint sub-agents, and had under such authority appointed B. as a sub-agent, and the corrupt practices committed by B. as such sub-agent of the respondent avoided the election. *Welland* (2), 187.

2. The persons amongst whom the respondent's moneys had been distributed by W., an agent of respondent, and persons acting under them, were sub-agents of respondent, and that their corrupt acts avoided the election. *Niagara*, 568.

3. *Semble*, that no limit can be placed to the number of parties through whom the sub-agency may extend. *Ibid.*

ALIENS.—1. The respondent attacked the qualification of one of the petitioners on the grounds that he was an alien. The learned Judge admitted the evidence, but held that the evidence as to petitioner having lived in the United States, without showing that his parents were American citizens, was not sufficient to establish the charge of alienage. *Prescott*, 1.

2. Where the voter was born in the United States, his parents being British-born subjects, his father and grandfather being U. E. Loyalists, and the voter residing nearly all his life in Canada: *Held*, entitled to vote. *Stormont*, 21.

3. An alien who came to Canada in 1850, and had taken the oath of

allegiance in 1861, but had taken no proceedings to obtain a certificate of naturalization from the Court of Quarter-Sessions, was held not qualified to vote.—*Bacon's vote. Brockville*, 129.

4. Nor was an alien, whose father had taken the oath of allegiance on obtaining the patent for his land under 9 George IV., c. 21, qualified to vote.—*Healey's vote. Ibid.*

5. The evidence that the parents of a voter had stated to such voter that he was born in the United States, but that his father was born in Canada, received, and the vote held good.—*Wright's vote. Ibid.*

6. Where evidence was given of parol admissions made by certain voters, some years before the election, that they had been born in a foreign country, and also evidence that since the parol admission the voters had voted at Parliamentary elections, and had sworn to the voter's oath as to being British subjects by birth or naturalization: *Held*, (1) That the oath at the polls could not be treated as testimony, not having been given in any judicial proceeding. (2) That by swearing at the polls he was a British subject by birth or naturalization, the voter only stated the legal result of certain facts. (3) That there was therefore no presumption of naturalization sufficiently strong to rebut the presumption of the continuance of the original *status* of alienage.—*Shenck's vote. Lincoln* (2), 500.

7. Where a voter, in support of his own vote, swore that he was born in the United States but that his parents were British subjects: *Held*, that the whole statement of the voter must be taken, and that it amounted to this: "I was born in the United States of British parents."—*Mulrennan's vote. Ibid.*

8. Certain aliens had taken the oaths of allegiance, &c., before a Justice of the Peace of a town, which oaths were administered to them in a township, but within the same county. *Held*, that under the Alien Act 34 Vic., cap. 22, sec. 2, (Can.), the Justice of the Peace in administering the oaths, was acting ministerially and not judicially;

and that the oaths were properly administered.—*Johnson's vote. Ibid.*

APPELLATE COURT.—1. An appellate court will not, except under special circumstances, interfere with the finding of the court of first instance on questions of fact depending on the veracity of witnesses and conflicting evidence. *Hulton*, 283.

2. In penal statutes questions of doubt are to be construed favorably to the accused, and where the court of first instance in a quasi criminal trial has acquitted the respondent, the appellate court will not reverse his finding. *North Ontario*, 304.

3. The petitioner was not allowed to urge before the Court of Appeal a charge of corrupt practices against the respondent personally, which had not been specified in the particulars, or adjudicated upon at the trial of the petition. *South Ontario*, 420.

ASSESSMENT ROLL.—1. The only question as to the qualification of a voter settled by the Court of Revision, under the Assessment Act, is one of value. *Stormont*, 21.

2. Parol evidence is inadmissible to alter the value assessed against property in the assessment roll. *South Grenville*, 162.

3. The assessment roll is conclusive as to the amount of the assessment; but the mere fact of the name of a person being on the roll is not conclusive as to his right to vote. The Returning Officer is bound to record the vote if the person takes the oath, but that is not conclusive. *North Victoria*, 584.

See R.S.O., c. 9, s. 8, and 41 Vic., c. 21, O.

ATTORNEY.—The attorney for the respondent may be ordered out of court when a witness is being examined on a charge of a corrupt bargain for his withdrawal from the election contest, when the evidence of such witness may refer to the sayings and doings of such attorney in respect of such withdrawal. *South Oxford*, 243.

BALLOTS.—1. The following ballots were held valid: (1) Ballots

with a cross to the right just after the candidate's name, but in the same column and not in the column on the right hand side of the name. (2) Ballots with an ill-formed cross, or with small lines at the ends of the cross, or with a line across the centre or one of the limbs of the cross, or with a curved line like the blades of an anchor. *North Victoria*, 671.

2. The following ballots were held invalid. (1) Ballots with a single stroke. (2) Ballots with the candidate's name written thereon in addition to the cross. (3) Ballots with marks in addition to the cross, by which the voter might be identified, although not put there by the voter in order that he might be identified. (4) Ballots marked with a number of lines. (5) Ballots with a cross for each candidate. *Ibid.*

3. *Quere*, whether ballots with a cross to the left of the candidate's name should be rejected, as the Deputy Returning Officer is not bound to reject such ballots under sec. 55 of the Dominion Elections Act, 1874. *Ibid.*

4. The following irregularities in the mode of marking ballot papers, held not to be fatal: (1) Making a single stroke instead of a cross. (2) Any mark which contains in itself a means of identifying the voter, such as his initials or some mark, known as being one used by him. (3) Crosses made at left of name, or not to the right of the name. (4) Two single strokes not crossing. *Monck*, 725.

5. The following irregularities held not to be fatal: (1) An irregular mark in the figure of a cross, so long as it does not lose the form of a cross. (2) A cross not in the proper compartment of the ballot paper, but still to the right of the candidate's name. (3) A cross with a line before it. (4) A cross rightly placed, with two additional crosses, one across the other candidate's name, and the other to the left. (5) A cross in the right place on the back of the ballot paper. (6) A double cross or two crosses. (7) Ballot paper inadvertently torn. (8) Inadvertent marks in addition

to the cross. (9) Cross made with pen and ink instead of a pencil. *Ibid.*

6. The neglect of a Deputy Returning Officer to initial the ballot papers, and to provide pen and ink instead of a pencil to mark them, would not avoid the election. *Ibid.*

7. The petitioner had received a majority of the ballots cast at the election; but on a recount before the County Judge, certain ballots, with other marks on the back than the initials of the Deputy Returning Officers, were rejected by the County Judge, thereby giving a majority to the respondent. Evidence was given on the hearing of the petition that the Deputy Returning Officers had, from a mistaken idea of their duty, placed the numbers of the voters, as marked in the voters' list, on the backs of the ballots. *Held*, that under 42 Vic., c. 4, s. 18, the marks so made did not avoid the ballots, and that such ballots should now be counted. *Russell* (2), 519.

8. *Scemle*, that the County Judge, acting ministerially on the recount of ballots, could not have investigated by whom or for what motive such marks had been made on the ballots. *Ibid.*

9. A voter who had inadvertently torn his ballot, and whose ballot was rejected on the counting of votes, was allowed his vote, the evidence proving that no trick was intended for the purpose of showing how he intended to vote. *South Wentworth*, 531.

10. The Election Act in its enacting part requires ballots to be marked with a cross on any place within the division which contains the name of the candidate. Ballots marked with a straight line within the division, or with a cross on the back, were rejected. *Ibid.*

11. Observations on the difference between the English and Ontario statutes in this respect. *Ibid.*

12. Certain Deputy Returning Officers, before giving out ballot papers to the voters at the election in question, placed numbers on the ballots corresponding with the numbers attached to the names of such

voters on the voters' lists. *Held*, (1) that the Deputy Returning Officers had acted contrary to law in numbering the ballots, and that the ballots so numbered should be rejected as tending to the identification of the voters. (2) That such conduct of the Deputy Returning Officers having had the effect of changing the result of the election, a new election was ordered. *East Hastings*, 764.

See also p. 223.

BETS.—See pp. 489, 660.

BRIBERY.—See CORRUPT PRACTICES (2).

CANDIDATE HIS OWN AGENT.—See pp. 211, 660.

CANDIDATE NOT SUPERVISING HIS AGENT.—See pp. 52, 560, 568.

CANVASSING.—See pp. 97, 187, 214, 245, 304, 343, 387, 420, 547, 660, 785, 803.

CASE NOT IN PARTICULARS.—See pp. 21, 163, 243, 252, 420, 489.

CHAMPERTY.—It is not a champertous transaction that an association of persons, with which the petitioner was politically allied, agreed to pay the costs of the petition. Even if the agreement were champertous, that would not be a sufficient reason to stay the proceedings on the petition. *North Simcoe*, 617.

CHARITY.—See pp. 214, 547, 576, 751.

COLORABLE APPOINTMENT OF SCRUTINEER.—See p. 274.

COMMISSION TO EXAMINE WITNESSES.—A Commission to examine witnesses in a foreign country may be issued in the case of the trial of an election petition. *Cornwall* (3), 803.

✓ **CORRUPT PRACTICES.**—(1.) Generally.—1. The total expenditure proved was \$610, and the number of voters on the roll was 4,669. *Held*, that the expenditure was not excessive. *East Toronto*, 70.

2. A candidate's appeal to his business, or to his employment of capital in promoting the prosperity of a constituency, if honestly made, is not prohibited by law. *West Peterboro*, 274.

3. One T., who was on the roll as an elector, and had sold his property in June, 1874, before the final revision of the Assessment Roll by the County Judge, was, with the knowledge of the respondent—who was aware a doubt existed as to T.'s right to vote—given an appointment to act as scrutineer at a distant polling place, and also a certificate from the Returning Officer under 38 Vic., c. 3, s. 28, to enable T. to vote at the place where he was to act as such scrutineer, at which place T. voted without taking the voter's oath, and returned without entering upon the duties of scrutineer. On a question of law reserved on the above facts for the Court of Appeal: *Held*, that the act complained of was not a corrupt practice under the statute; but under the circumstances, the Court gave the respondent no costs in appeal. *Ibid*.

4. The intention of the Legislature was, that votes should be given from the conviction in the mind of the voter that the candidate voted for was the best person for the situation, and that the public interests would be best served by electing him; and that the evil to be corrected was supporting a candidate for *causâ lucri*, or personal gain in money or money's worth to the voter. *Halton*, 283.

5. If an act, made a corrupt practice by statute, is done by an agent of a candidate, but not in pursuit of the object of the agency or the interest of the candidate, or in any way in relation to the election, but solely for the purpose, interest, or gratification of the agent, such act, not being done by such agent *qua* agent, is not within the penalties of s. 3 of 36 Vic., c. 2. *Lincoln*, 391.

6. Where corrupt practices by agents, and others in the interest of the respondent, affected less votes than the majority (23) obtained by the respondent at the election:

Held, under 39 Vic., c. 10, s. 37, that such corrupt practices did not extend beyond the votes affected thereby, and did not avoid the election. *Lincoln* (2), 489.

7. Where, in addition to the above corrupt acts, bets were made by agents of the respondent and others, with a number of voters who were supporters of N., the opposing candidate, the effect of the bets being that in order to win the bets, the voters must vote for the respondent. *Held*, that these bets were for the purpose of getting votes for the respondent, and were corrupt practices; and that in connection with the other corrupt acts proved as set out above, they affected the result of the election; and that the election was therefore avoided. *Ibid*.

8. The majority of the respondent was 337; but it appeared in evidence that two agents of the respondent had bribed between forty and fifty voters; that in close proximity to the polls spirituous liquor was sold and given at two taverns during polling hours, and that one of such agents took part in furnishing such liquor; and that such agent had previous to the election furnished drink or other entertainment to a meeting of electors held for the purpose of promoting the election. *Held*, that the result of the election had been affected thereby, and that the election was void. *West Hastings* (2), 539.

9. *Per Moss*, C. J.—*Primâ facie* corrupt practices avoid an election; and the onus of proof that they are not sufficient to affect the majority of the votes rests upon the respondent. *Ibid*.

10. *Semble*, if evidence showed that corrupt practices had been committed by a respondent, it would be the duty of the Court so to adjudicate whether the petitioner was willing to withdraw the charge or not. *South Renfrew*, 556.

11. The definition of "corrupt practices" in sec. 3, and the effect of sec. 20 of the Controverted Elections Act of 1873, as to the report of an Election Judge to the Speaker, considered. *North Victoria*, 584.

12. The first principle of Parliamentary law is that elections must be free; and therefore, without referring to statutory provisions, if treating was carried on to such an extent as to amount to bribery, and undue influence was of a character to affect the election, the election would be void. A single bribed vote brought home to a candidate would throw doubt on his whole majority, and would therefore annul his return. *Ibid.*

13. *Seem*, that the term "wilful," as used in sec. 98, cannot be construed in a narrower sense than the term "corruptly" in sec. 92, sub-sec. 1; and that the term "corruptly" does not mean wickedly, or immorally, or dishonestly, but doing that which the Legislature plainly meant to forbid;—as an act done by a man knowing that he is doing what is wrong, and doing it with an evil object. *Halton*, 736.

See also DISQUALIFICATION.

— (2.) Bribery (a) Offers of.

1. Where a charge of bribery is only the unaccepted offer of a bribe, the evidence must be more exact than that required to prove a bribe actually given or accepted. *South Grey*, 52.

2. Where the evidence as to bribery consists of offers or proposals to bribe, the evidence should be stronger than with respect to actual bribery. *East Toronto*, 70.

3. Where three voters swore to three separate offers of bribery made to each of them separately by an agent of the respondent, which such agent swore were never made by him: *Held*, that the evidence was not sufficient to justify the setting aside of the election. *Ibid.*

4. The language of Martin, B., in the *Wigan case* (1 O'M. & H. 192), adopted as a general rule applicable to this case. *Ibid.*

5. Where the evidence as to the offer of bribes was contradictory, and the parties making charges of bribery appeared to have borne indifferent characters: *Held*, that the offer of bribes was not satisfactorily established. *Willand* (2), 187.

6. Where one party affirmed and the other party denied a corrupt offer between them as to voting for the respondent: *Held*, that the offer was not sufficiently proved. *Dundas*, 205.

7. A promise by an agent of the respondent when canvassing a voter, that he "would see him another time and things would be made right," is not an offer of bribery. *North Victoria*, 252.

8. Where, in evidence of offers of bribery, an assertion on one side is met by a contradiction on the other, the uncorroborated assertion is not sufficient to sustain the charge. *West Peterboro*, 274.

9. A charge of bribery against the respondent, where the evidence was unsatisfactory and repugnant in itself, and rested more on suspicion than on clear positive proof, was held not proven. *North Ontario*, 304.

10. One S., an alleged agent of the respondent, made offers of sheepskins to two voters as to their votes at the election, but he swore the offers were made in jest; but as the evidence did not show that S. was an agent of the respondent at the time of the alleged offers, no effect was given to the charge. *North Middlesex*, 376.

11. A statement that an offer to bribe was made in jest should be received with great suspicion. A briber may make an offer which he intends should be taken seriously, and then, if not accepted, he may assert it was made in jest. *Ibid.*

12. On a charge that one O. bribed a voter by promising to procure a deed of his land for him if he would procure votes for the respondent, the evidence showed that though the voter had so represented, the procuring of the deed had nothing to do with the election. *Ibid.*

13. A promise to work for a voter, made without reference to the election and as a joke, not evidence of bribery. *Halton*, 736.

14. A charge that the respondent promised to give a voter certain work to do if he voted for him, was disproved by the evidence of the

respondent and another, and by the admissions of the voter made to other parties. *Ibid.*

15. The evidence in support of the offer of a present, or something nice, to the wife of a voter to induce the voter to refrain from voting, showing that it had reference to a different election than the one in question, an amendment of the particulars was refused, and the charge dismissed. *Ibid.*

16. The charge against the respondent and one B., of an offer of money to, and to procure an appointment as Justice of the Peace for, a voter in consideration of his voting for the respondent, was supported by the evidence of the voter, who showed bitter hostility to B.; but the charge was denied by the respondent. And the evidence showing the statement to be improbable, and that the election contest was carried on by the respondent with a scrupulous and honest endeavor to avoid any violation of the law against corrupt practices, the charge was dismissed. *Ibid.*

17. A charge against an agent of the respondent, that he had promised to procure the office of police magistrate for one W., was denied by the agent and the respondent; and it further appearing that W. had acted on the committee, and voted, for the opposing candidate, the charge was dismissed. *South Ontario*, 751.

18. Charges against the respondent, that he had promised an office to the son of a voter, and a contract to the voter himself, were contradicted by other evidence, and dismissed. *Ibid.*

19. The respondent canvassed a voter, who at the trial swore that after he had agreed to vote for him, the respondent promised to give the voter some work; the respondent denied the promise. *Held*, although the voter appeared to be a truthful witness, and was not shaken on cross-examination, that the promise of employment was not made out beyond all reasonable doubt. *North Ontario*, 785.

See pp. 154, 376, 458, 612, 710.

— (2.) **Bribery (b) Acts** cf.—1. The petitioners having given evidence of corrupt practices: *Held*, (1) That the election was void for bribery by agents. (2) That corrupt practices extensively prevailed at this election. *Prescott*, 1.

2. *Quere*, whether the Judge presiding at the trial should not direct notice to be given to the parties who, from the evidence, were apparently guilty of corrupt practices, so that the Judge might decide upon their liability to disqualification, and report them under the statute. *Ibid.*

3. The respondent, after announcing himself as a candidate, gave \$10 in two \$5 bills to a child of a voter, then three or four years old, which had been named after him. He had two years previously intimated that he would make the child a present. *Held*, that the gift, under such circumstances, was not bribery. *Glen-garry*, 8.

4. The plain and reasonable meaning of the statute is, that when the prohibited things are done in order to induce another to procure, or to endeavor to procure, the return of any person to serve in Parliament, or the vote of any voter at any election, the person so doing is guilty of bribery. *East Toronto*, 70.

5. Where a candidate in good faith intended his election should be conducted legally, and had printed and circulated throughout the constituency a synopsis of the new law as to corrupt practices, and had caused an editorial article to be printed in a newspaper, and had taken trouble to have the law explained to the electors. *Held*, that although many of the acts done during the election created doubt and hesitation in the mind of the Judge, yet as the return of a member ought not to be lightly set aside, the Judge ought to be satisfied that the acts done were done to influence the electors and so done corruptly, and this election was upheld. *West Toronto*, 97.

6. Where in ordinary cases there is evidence to go to a jury, but on which the Judge, if sitting as a juror, would find for the defendant;

in similar cases in election trials he ought to find against the charge of bribery. *Ibid.*

7. Where money was paid to voters for services agreed to be rendered, but such services were not rendered owing to the misconduct of the voters, such payment was not bribery. *Ibid.*

8. A voter who had a claim of \$3 from a former election of respondent, when canvassed to vote said he did not think he should vote, evidently putting forth the \$3 that was due to him as a grievance. The clerk of an agent of the respondent promised to pay it to him, and he voted, and the money was paid after the election, and charged by the clerk in the agent's accounts as "paid J. Landy \$3," but without the knowledge of such agent. Another agent of the respondent, M., who was treasurer of the ward, and was aware of the claim, and had told the voter it would be made right, paid the first agent's account, but did not then take particular notice of the payment, and it was not explained to him. The clerk had been requested by his employer (the agent first mentioned) to canvass a particular voter, but was not employed as a canvasser generally by any one. *Held*, (1) That such clerk was not an agent or sub-agent of the respondent. (2) That the payment of the account by the agent M. was not, under the circumstances, a ratification by him after the act, so as to affect the election. *Ibid.*

9. An elector, when asked to vote for respondent, said that it would be a day lost if he went to vote, which would cost him \$1. To which the canvasser replied, "Come out, and your \$1 will be all right." *Held*, not sufficient to establish a charge of bribery. *Monck*, 154.

10. A voter who had been frequently fined for drunkenness was canvassed by C. to vote for the respondent, and was asked by him "how much of that money" (paid in fines) "he would take back and leave town until the election was over." Counsel for the respondent then admitted that C. was an agent of the respondent, and that the

evidence was sufficient to avoid the election. *Cornwall*, 203.

11. The respondent had in 1873 compromised with his creditors for 50 cents in the \$1, and then promised to pay all his creditors in full. About the time of the election he paid one S., who had at the two previous elections supported the opposing candidate, a portion of the promised amount. *Held*, under the circumstances, the payment was not bribery. *Dundas*, 205.

12. Where half a cord of wood was given to a voter in poor circumstances, during the election, and the giver swore that it was given out of charity; and where a voter was bailed out of jail on the day of polling by a friend, but, according to the evidence, without reference to the election. *Held*, not acts of bribery. *London*, 214.

13. K., an agent for Ward No. 2, while canvassing a voter in Ward No. 6, gave him money to get beer, for which the voter paid a lesser sum, and as the voter was poor, told him to keep the change. *Held*, under the circumstances, not an act of bribery. *Ibid.*

14. The evidence respecting a charge of bribery, by payment of a disputed debt, was held insufficient to sustain the charge. *North Victoria*, 252.

15. An agent of the respondent, while canvassing a voter, gave \$8 to the widowed sister of the voter, an old friend of his, who was then in reduced circumstances. The agent stated that this was not the first money so given, and that it was in no way connected with the election. *Held*, under the circumstances, not an act of bribery. *Ibid.*

16. One M., the financial agent of the petitioner, agreed with a voter, who had a difference with the petitioner about a right to cut timber on the voter's land, to settle the matter—the voter, when canvassed to vote for the petitioner, referring to this difference. M. signed an agreement in the petitioner's name, whereby he surrendered any claim to cut timber except as therein mentioned. *Held*, (1) That a surrender of the right to cut timber on the

lands of another was a "valuable consideration," within the meaning of the bribery clauses of 32 Vic., c. 21. (2) That the agent M. was guilty of an act of bribery. *Ibid.*

17. *Quere*, whether the word "employment" used in the bribery clauses of the Act refers to an indefinite hiring, or would include a mere casual hiring. *West Peterboro*, 274.

18. One H., a voter, held a claim against the respondent, and M., his agent, and another, for five years, which he had been endeavoring to procure payment of. When canvassed at the time of the election, he stated that if he did not get it settled he would not vote for the respondent. M. induced the respondent to give his promissory note to H. for the debt, but did not give the respondent to understand, directly or indirectly, that the note had anything to do with the election. *Held*, (1) That it is always open to inquire, under statutes similar to the Election Acts, whether the debt was paid in accordance with the legal obligation to pay it, or in order to induce the voter to vote or refrain from voting. (2) (Affirming *Wilson, J.*) That on the evidence, the motive which induced M. was that of procuring the voter H. to vote at the election, and that thereby an act of bribery was committed by M. as such agent. *North Ontario*, 304.

19. Bribery is not confined to the actual giving of money. Where a grossly inadequate price has been paid for work or for an article, it is clearly bribery. *Cornwall*, 547.

20. A large sum of money, averaging \$3 per head, had been spent by two of the agents of the respondent, and money had been given by them to parties without any instructions. *Held*, that where such money had been applied improperly, it must be considered that it was intended to be so applied. *Ibid.*

21. One L., a tavern-keeper, was told by H., one of the respondent's canvassers, that he thought L. could get \$18 or \$20 from P., if he would stay at home during the election. L. expected that the money would be spent at his tavern, and showed

that he did not know what was intended. Neither H. nor P. were examined. *Held*, on the evidence, there was no actual offer to bribe. *North Victoria*, 612.

22. The avoidance of an election for an act of bribery committed by the agent of a candidate is a civil proceeding, and is not brought about to punish the candidate, but to secure an unbiassed election. *Kingston*, 625.

23. Money was given to certain voters to make bets with others on the result of the election, but as there was no evidence of a previous understanding as to the votes, such bets were not bribery. The practice of making bets on an election condemned as being like a device to commit bribery. *South Norfolk*, 660.

24. One P., some years before the election, claimed that the respondent was indebted to him, but the respondent denied all liability, and the dispute caused a coolness between them. One H., four months before the election, was employed by P. to collect another account from the respondent, and did so. H. stated to P. that as the respondent was in a good humor, it would be a good opportunity to get the old account settled, and asked P. if he would support the respondent in case the old account was settled. P. replied that he might promise what he liked. H. then took the account to the respondent, who looked it over and gave his note for it. H. and the respondent never referred to the election, nor to the settlement, as affecting the election. *Held*, that the respondent had not been guilty of bribery in this transaction. *South Ontario*, 751.

25. *Semble*, that s. 92 of the Dominion Elections Act, 1874, points to cases where money, or valuable consideration, is given to a voter, and not to a community generally. *Ibid.*

26. The respondent owed one M. a debt, which had been due for some time. He was sued for it about the time of the election, and was informed that his opponents were using the non-payment of it against him in the election. The respondent stated he would not pay it until

after the election, as it might affect his election. *Held*, that the promise to pay the debt was not made to procure votes, but to silence the hostile criticism, and was not therefore bribery. *North Ontario*, 785.

27. *Per Armour*, J., that the hiring of orators and canvassers at an election is bribery. *Ibid*.

28. An agent of the respondent C. employed one W. to go with him on the evening before the election to several electors, from whom both C. and W. made colorable purchases, but with the corrupt intention of inducing the persons from whom the purchases were made to vote or refrain from voting at the election. *Held*, that C. and W. were guilty of bribery, and that the election was avoided in consequence of their corrupt acts. *Cornwall* (3), 803.

— (3.) Treating (a) Generally.
—1. Where a charge of a corrupt intent in treating is made, the evidence must satisfy the Judge, beyond reasonable doubt, that the treating was intended directly to influence the election, and to produce an effect upon the electors, and was so done with a corrupt intent. *Glen-garry*, 8.

2. Treating, when done in compliance with a custom prevalent in the country and without any corrupt intent, will not avoid an election. *Welland*, 47.

3. Where the object of an agent in treating is to gain popularity for himself, and not with any view of advancing the interest of his employer, such treating is not bribery. *East Toronto*, 70.

4. That the furnishing of refreshment to voters by an agent of a candidate, without the knowledge or consent of the candidate and against his will, will not be sufficient ground to set aside an election, unless done corruptly or with intent to influence voters. *Ibid*.

5. *Quere*, whether the Treating Act, 7 William III., c. 4, is in force in this Province. *Dundas*, 205.

6. Treating is not *per se* a corrupt act, except when so made by statute; but the intent of the party treating may make it so, and the intent

must be judged by all the circumstances by which it is attended. *North Middlesex*, 376.

7. *Semble*, when it is done by a candidate in order to make for himself a reputation for good fellowship and hospitality, and thereby to influence electors to vote for him, it is a species of bribery, which would avoid his election at common law. *Ibid*.

8. When the respondent who, in the course of his business as a drover, had been in the habit of treating at taverns, treated during his canvass, but to a less extent than was his habit, and not apparently for the purpose of ingratiating himself with the electors. *Held*, under the circumstances, that such treating was not corrupt, and his election was not avoided. *Ibid*.

9. The general practice which prevails here of persons drinking in a friendly way when they meet, would require strong evidence of a profuse expenditure of money in drinking, to induce a Judge to say it was corruptly done, so as to make it bribery or treating at common law. *Kingston*, 625.

10. Treating at an election, in order to be criminal, must be done corruptly, and for the purpose of corruptly influencing the voter. *South Norfolk*, 660.

11. The giving of free dinners to a number of electors who had come a long distance in severe winter weather, in the absence of evidence that it was done for the purpose of influencing the election either by voting or not voting, or because such electors voted, was not a corrupt act. *North Victoria* (2), 671.

12. One D., who had been a candidate for various offices for twenty years prior to the election in question, and had freely employed treating as an element in his canvassing, became an agent of the respondent, and treated extensively, as was his common practice, during the election. The respondent was aware of D.'s practices, and once, in the early part of the canvass, cautioned D. as to his treating, but never repudiated him as his agent. *Held*,

on the evidence, that as D. did no more in the way of treating during the election than he had done on former occasions, and had employed treating as he ordinarily did as his argument, and had not used it as a means of corruptly influencing the electors, he was not guilty of a corrupt practice. *East Elgin*, 769.

13. *Semble*, the treating proved in this case, if practised by one not theretofore given to such practice, would have been sufficient to have avoided the election. *Ibid*.

14. Observations on the law as it now stands, as holding out inducements to candidates to employ men who are habitual drinkers to canvass by systematic treating and thus cause electioneering to depend upon popularity aroused by treating, rather than by the merits of the candidates, or the measures they advocate. *Ibid*.

✓ (3.) **Treating (b) Meetings of Electors.**—1. The respondent, who was then representing the county in the Legislature, on two several occasions at the close of public meetings of electors called by him to explain his conduct as such member, treated all present to liquor at taverns. He had not at the time made up his mind to be a candidate at the then coming election, but told the electors that "if they gave him their support he would expect it." *Held*, under the circumstances, that such treating was not done with a corrupt intent. *Glengarry*, 8.

2. *Quære*, whether such treating was in any case a corrupt practice, under sec. 61, of 32 Vic., cap. 21, or other than an illegal act which subjected the party to a penalty of \$100 under sec. 65—the statute pointedly omitting all mention of treating. *Ibid*.

3. Reasonable refreshments furnished *bona fide* to committees promoting the election are not illegal. *South Grey*, 52.

4. About an hour after a meeting of a few friends of the respondent at a tavern, one of their number was sent some distance to buy oysters for their own refreshment, of which the parties and others

partook. The following day a friend of the respondent treated at a tavern, and not having change, the respondent gave him 25 cents to pay for the treat. *Held*, not to be corrupt treating, nor a violation of 36 Vic., c. 2, s. 2. *Welland* (2), 187.

5. The respondent, who was a member of a temperance organization, held an election meeting in a locality within the electoral division, and about an hour after the meeting had dispersed, went to a tavern where he met about 10 or 15 persons in the bar-room, to whom he made the remark, "Boys, will you have something?" Nothing was then taken; but one E., a supporter of the respondent, said he would treat, and he did treat the persons present, and the respondent gave him the money to pay for the treat. *Held*, (1) That as the meeting for promoting the election had dispersed an hour before the respondent went to the tavern, this was not a meeting of electors. (2) That the treating not having been done with a corrupt intent, was not an offence under 32 Vic., c. 21, s. 61, as amended by 36 Vic., c. 2, s. 2, nor at common law. *Dundas*, 205.

6. One F., an agent of the respondent, on the day of the nomination of candidates to contest the election, and while the speaking was going on, treated a large number of persons at a tavern across the street from the place of the nomination, for which he paid \$7 or \$8. *Held*, a corrupt practice by an agent of the respondent, which avoided the election. *Ibid*.

7. The treating of persons by a candidate at a tavern during his canvass is not a treating of electors with corrupt motives. *London*, 214.

8. Where a member of the respondent's committee, on the day of election, invited some of his friends to his house, which was opposite the polling booth, and gave them beer, &c., during or soon after polling hours. *Held*, not a contravention of 32 Vic., c. 21, s. 66. *Ibid*.

9. One F., an agent of the respondent, brought a jar of whiskey to a meeting of electors assembled for the purpose of promoting the

election, and gave drinks from the same to the electors present. This was held a corrupt practice, and a violation of the Election Law of 1868, as amended by the Election Act of 1873, and that the election was avoided thereby. *West Wellington*, 231.

10. A meeting of the electors was held in a town hall, and C. and a number of electors went from the meeting to a tavern, where they were treated by C., an agent of respondent. *Held*, (1) That this was a meeting of electors assembled for the purpose of promoting the election; and (2) that the treating by C. was a corrupt practice. *East Peterboro*, 245.

11. After a meeting of electors in a town hall, some friends of the respondent remained together consulting about the election, and afterwards went to a tavern, where some of them boarded, and had an oyster supper. *Held*, that the evidence was not sufficient to sustain the charge that this was entertainment furnished to a meeting of electors. *North Victoria*, 252.

12. A charge of treating a meeting of electors by an alleged agent of the petitioner was not sustained, owing to the alleged agency not having been satisfactorily proved. *Ibid*.

13. Refreshments provided at a meeting of electors, all of one political party, or at a meeting of a committee to aid in returning a candidate, by and at the expense of one or more of their number, unless in some extreme case, cannot be deemed a breach of the provisions of the statute against treating. *Halton*, 283.

14. A meeting of the electors was held at a tavern, at which both candidates were present. A dispute arose, and the meeting broke up and the parties left the room as a disorderly crowd, and began pulling off their coats and talked of fighting. A treat was proposed to quiet the people, and one F. (held by *Wilson, J.*, to be an agent of the respondent) treated, and the crowd quieted down and dwindled away. *Held* (*per Wilson, J.*), that the

treating, under the circumstances, was not furnishing drink to a meeting of electors assembled for the purpose of promoting the election. *North Ontario*, 304.

15. On appeal, the Court, without expressing any opinion as to the treating, held, on the evidence, that F. was not an agent of the respondent at the time of the alleged treating. *Ibid*.

16. One W., a member of a political association, held to be agents of the respondent, treated the members of the association present at a meeting in a tavern. *Held*, that the members so present were electors assembled to promote the election of the respondent within s. 61 of the Election Law of 1868, and that such treating was a corrupt practice by W. *North Grey*, 362.

17. After the nomination of candidates on the nomination day, and on another occasion, after a "meeting assembled for the purpose of promoting the election," and after the business for which the electors had assembled was over, the electors left the building in which the meeting was held and dispersed to various taverns, at which their vehicles had been put up, and then before leaving for home treated each other; and at one of the taverns the respondent himself partook of a treat. *Held*, (1) Not furnishing drink or other entertainment to meetings of electors within s. 61 of the Election Law of 1868. (2) That the meeting of electors for the nomination of candidates, is a "meeting assembled for the purpose of promoting the election." *North Middlesex*, 376.

— (3.) *Treating (c) on Polling Day.*—1. The distribution of spirituous liquor on the polling day, with the object of promoting the election of a candidate, will make his election void. *South Grey*, 52.

2. Upon questions reserved by the Rota Judge under "The Controverted Elections Act of 1871," it appeared that H. and B. voted for respondent. H. kept a saloon, which was closed on the polling day; but upstairs, in his private residence, he gave beer and whiskey without

charge to several of his friends, among whom were friends of both candidates. B., who had no license to sell liquor, sold it at a place near one of the polls to all persons indifferently. This was not done by H. or B. in the interest of either candidate, or to influence the election, B. acting simply for the purpose of gain; and the candidate did not know of or sanction their proceedings. *Held* (though with some doubt as to B.), that neither H. nor B. had committed any corrupt practice within sec. 47 of 34 Vic., cap. 3, and therefore had not forfeited their votes; for they had not been guilty of bribery or undue influence, and their acts, if illegal and prohibited, were not done "in reference to" the election, which, under sec. 47 of 34 Vic., cap. 3, is requisite in order to avoid a vote. *Brockville*, 139.

3. On the day of the election in question, and during polling hours, one M., an agent of the respondent, was offered by a person unknown to him spirituous liquor (whiskey) in a bottle, which such agent, after remonstrating with such person, accepted and drank at the polling place where such agent then was. The unknown person also gave spirituous liquor from the same bottle to other persons then present. *Held*, that as the Legislature had, by the provisions as to the selling or giving of liquor during the hours of polling, provided for the punishment of one particular class, which was defined to be the seller or giver, it did not intend to include the other class, the purchaser or receiver, to which no reference was made, except inferentially; and that therefore such agent, as the receiver of spirituous liquor during such polling hours, was not guilty of a corrupt practice. *West Toronto*, 179.

4. One F., a tavern-keeper, was given \$5 by the respondent, and requested to appoint a scrutineer to act for the respondent at the poll on polling day. F. kept his tavern open on polling day, and various persons treated there during polling hours. Counsel for the respondent, after evidence of the above facts, admitted that F. was an agent of

the respondent, and that his acts were sufficient to avoid the election. *Held*, that although the Court did not adjudicate that the respondent, by giving the \$5 and requesting F. to appoint a scrutineer, had constituted him an agent for all purposes, it was the practice of the Court to take the admission of counsel in place of proof of agency, and therefore the admission of counsel as to F.'s agency was sufficient. *Held* further, that F., as such agent, had been guilty of a corrupt practice in keeping his tavern open on polling day, and that such corrupt practice avoided the election. *Russell*, 199.

5. On the day of the election, and during the hours of polling, one W., an agent of the respondent, was offered a treat in a tavern within one of the polling divisions, of which such agent and others then partook. *Held*, that giving a treat in a tavern during polling hours was a corrupt practice, and being an act participated in by an agent of the respondent, the election was avoided. *South Essex*, 235.

6. One B. was appointed, in writing, by the respondent to act as his agent for polling day. During the day he went to a tavern and asked for and was given a glass of beer. *Held*, that B. treated himself, and neither gave nor sold, and was not therefore guilty of a corrupt practice. *East Peterboro*, 245.

7. Where evidence of an act of keeping open his tavern on polling day, and selling liquor therein as usual, by P., an agent of the petitioner, came out on cross-examination, and during the argument the evidence was objected to because the charge was not in the particulars, the case was not considered. *North Victoria*, 252.

8. One M., an agent of the respondent, treated at a tavern during polling hours on polling day. The evidence was, that decanters were put down, and people helped themselves, but there was no evidence that spirituous liquors were used. The evidence was objected to at the time, as the charge was not mentioned in the particulars, but admitted subject to the objec-

tion. *Held*, (1) That the nature of the treat in the bar-room of a country tavern raised the presumption that the treat was of spirituous liquors, and was a corrupt practice, which avoided the election. (2) That had an application been made to add a particular embracing the charge, it would have been granted. *Ibid*.

9. *Seemle*, per *Gwynne*, J., that as to the seller or giver of treat on polling day, the only person liable to the penalty of \$100 would be the tavern-keeper, as the statute does not authorize two penalties for the same act. *North Grey*, 362.

10. One L., an alleged agent of the respondent, went into the tavern of one D. during polling hours on polling day, and purchased spirituous liquor, with which he treated himself and several persons there present. *Held*, per *Gwynne*, J., that the penalties provided by s. 66 of the Election Law of 1868 apply only to the tavern-keeper, who as such is able to control what is done on his own premises in violation of the Act, and that the treating by L. was not a corrupt practice. *Per Draper*, C. J. A.—(1) That section 66 of the Election Law of 1868 must be construed distributively. (2) That under the first part of the section the tavern-keeper is the only person who can incur the penalty, for not keeping his tavern closed during the prescribed time. (3) That under the second part of the section, the persons who incur the penalty are (a) the tavern-keeper who sells liquor in violation of the statute, and (b) the purchaser who gives the liquor purchased by him to persons in the tavern. *Lincoln*, 391.

11. One C., a member of the respondent's committee at W., partook of whiskey in the kitchen of a tavern at W. during polling hours, and also, when bringing a voter from the town of O. to the town of W. (within the same electoral division) to vote at W., treated himself and the voter in O. *Held*, by the Court of Appeal (*Draper*, C. J. A., *dissentiente*), that

C. was not guilty of corrupt practices within s. 66 of the Election Law of 1868. *South Ontario*, 420.

12. *Held*, further, that s. 66 of the Election Law of 1868 (32 Vic., c. 21), as amended by 36 Vic., c. 2, applies only to shop, hotel and tavern-keepers, who alone are liable to the penalties for keeping open the tavern, etc., and for selling or giving spirituous liquors during the prohibited hours. *Ibid*.

13. *Held*, by the Court of Appeal (reversing *Wilson*, J.), that the prohibition in such section (66) as to opening taverns and giving or selling liquor "in the municipalities in which the polls are held," applies to all the municipalities within the constituency, irrespective of the place where the vote is given or to be given. *Ibid*.

14. The respondent, on polling day and during polling hours, went to a tavern at W. and partook therein of spirituous or fermented liquor, for which he did not then pay. *Held*, per *Wilson*, J., that he did not "sell or give" spirituous liquors within the meaning of s. 66 of the Election Law of 1868. *Ibid*.

15. By the 3rd sec. of 39 Vic., cap. 10, which is substituted for the 66th sec. of the Election Law of 1868, tavern-keepers, or persons acting in that capacity for the time, who sell or give liquor at taverns on polling day and within the hours of polling, are guilty of corrupt practices; but persons who treat or are treated at such taverns are not affected by the statute.—*Ford's vote*. *Lincoln* (2), 500.

16. Certain voters met at a tavern on polling day, and one B. said he did not know how to mark his ballot. One of the voters, after showing B. how to mark his ballot, according to the candidate he desired to vote for, treated. *Held*, that the treating was not a violation of s. 94 of the Dominion Elections Act, 1874, nor a corrupt practice under s. 98 of the Act. *North Ontario*, 785.

17. One M. canvassed a voter on polling day, and urged him to vote for the respondent, and, while

canvassing, treated the voter four times; the voter then went and voted. *Held*, that the treating was for the purpose of corruptly influencing the voter to vote or refrain from voting at the election. *Ibid*.

18. A scrutineer for the respondent had some whiskey with him on polling day, and treated the Deputy Returning Officer, Poll Clerk, and another in the polling station. *Held*, not a corrupt practice. *Ibid*.

✓ (4.) Undue Influence.—1. The respondent was charged with intimidating Government servants during his speech at the nomination of candidates, by threatening to procure the removal of all Government servants who should not vote for him, or who should vote against him. The evidence showed that, though in the heat of debate, and when irritated by one U., he used strong language, there was no foundation for the corrupt charge: and as it should not have been made, the costs in respect of the same were given to the respondent against the petitioner. *Welland*, 187.

2. One B. claimed the right to vote in respect of his wife's property, and was told by W., an agent of the respondent, that he could not vote unless he could swear the property was his own. The voter's oath was read to him, and the agent repeated his statement, and said he would look after the voter if he took the oath. The voter appeared to be doubtful of his right to vote, and withdrew. *Held*, that W. was not guilty of undue influence.

3. *Quære*, Whether the act of the agent as above set out was undue influence under 32 Vic., c. 21, s. 72. *Halton*, 283.

4. One W., a voter, who was in arrears to the Crown for the purchase money of a lot of land, was canvassed by B., an alleged agent of the respondent, who told him that the Government would look sharply after those in arrears for their land who did not vote for the supporters of the Government. *Held* (reversing *Wilson*, J.), that

what occurred was a *brutum fulmen*, or an expression of opinion upon a subject on which every one was competent to form an opinion. *North Ontario*, 304.

5. Shortly before polling day the respondent's agents issued a circular, the substance of which was that they had ascertained upon undoubted authority that W., an independent candidate, despairing of election himself, was procuring his friends to vote for C., the opposition candidate. W. denied the truth of this report. *Held*, that this was not a "fraudulent device," within the meaning of sec. 72 of 32 Vic., cap. 21, to interfere with the free exercise of the franchise of voters. *East Northumberland*, 387.

6. The respondent, at a public meeting, claimed that, whether elected or not, he would have the patronage of the constituency in reference to appropriations and appointments. *Held* (reversing *Wilson*, J.), that the respondent was not guilty of undue influence as defined by s. 72 of the Election Law of 1868, nor as recognized by the common law of the Parliament of England. *Muskoka*, 458.

7. To sustain a general charge of undue influence, it would be necessary to prove that the intimidation was so general and extensive in its operations that the freedom of election had ceased in consequence. *Ibid*.

8. Two agents of the respondent gave a voter, M., some whiskey on polling day, and took him in a boat to an island, where they stayed for some time. One of the agents then left, and the other sent M. to another part of the island for their coats. During M.'s absence the latter agent left the island with the boat, but M. got back in time to vote, being sent for by the opposite party. *Held*, that the two agents were guilty of undue influence. *North Ontario*, 785.

— (5.) Hiring Teams to Convey Voters to the Poll.—1. On the admission of the respondent's counsel the election was avoided, on the ground that agents of the respondent had, during the election, hired

and paid for teams to convey voters to the polls. *Prince Edward*, 45.

2. The hiring by an agent of the respondent of a railway train to convey voters to and from places along the line of railway where they could vote, was a payment of the travelling expenses of voters in going to and from the election, within the meaning of sec. 71 of 32 Vic., c. 21, and was a corrupt practice, and avoided the election. *North Simcoe*, 50.

3. The payment of a voter's expenses in going to the poll is illegal, as such, and a corrupt practice, even though the payment may not have been intended as a bribe. *South Grey*, 52.

4. Cabs and carriages were hired for the use of committee-men and canvassers during the election and on the day of polling, with instructions to the drivers that they were not to convey voters to and from the poll. One cab was however used for that purpose for the greater part of the day, but without the assent of the agent of the respondent, who had charge of the cab. *Held*, that as the evidence did not show that the cabs and carriages were colorably hired for the purpose of bribery or conveying voters to the poll, or that one cab was so used with the assent of the agent of respondent, the hiring was not an illegal act within s. 71 of 32 Vic., c. 21. *West Toronto*, 97.

5. One M., a carter, who voted for respondent, at the request of P., the respondent's agent, carried a voter five or six miles to the polling place, saying that he would do so without charge. Some days after the election, P., the agent, gave M. \$2, intending it as compensation for the conveyance of such voter to the poll, but M. thought it was in payment for work which he had done for P. as a carter. The candidate knew nothing of the matter. *Held*, that there was properly no payment by P. to M. for any purpose, the money being given for one purpose and received for another; but that if there had been, it was made after P.'s agency had ceased, and there was no previous hiring or

promise to pay, to which it could relate back. *Brockville*, 139.

6. If such payment had been established as a corrupt practice, it would have avoided P.'s vote, but not M.'s; and it would not have defeated the election, for it was not found to have been committed with the knowledge or consent of the candidate, but the contrary. *Ibid*.

7. On polling day, one W. asked two voters to go with him and vote for the respondent, and he would bring them back, and they could feed their horses and have dinner. W. sent one of his horses on some business of his own, and hired from one of the voters a horse, for which W. paid him 50c., and then drove with the two voters to the poll. *Held*, not a hiring of a horse, etc., to carry voters to the poll within s. 71, nor a furnishing of entertainment to induce voters to vote for the respondent, within s. 61 of the Election Law of 1868. *North Victoria*, 252.

8. The Court declined, in the state of the law prior to the Dom. Election Act, 1874, to exclude inquiry as to the payment of travelling expenses of persons going to and returning from the poll, inasmuch as such payment might amount to bribery. *North Victoria*, 584.

9. Where the amounts paid for hiring teams were fair and reasonable, such hiring was not bribery under the Dom. Con. Election Act, 1873. *North Victoria*, 612.

10. Where a canvasser for the respondent received money for hiring teams, and hired from those indebted to him, and agreed with them to give them credit for the respective amounts to be paid for the teams, such an arrangement was not evidence of corrupt practices. *Ibid*.

11. Money given to a person to hire a team, and to go round canvassing, held, on the evidence, not bribery. *Ibid*.

12. One L., a voter, hired a horse and cutter on the day of the election, and with M., a scrutineer for the respondent, drove to the poll and voted. The day after the polling L. and M. returned to their

homes, and on the way M. gave L. \$4 to pay for the horse and cutter. *Held*, (1) that the payment of \$4 having been made after the election, and not having been made corruptly to influence the voter to vote for the respondent, was not a corrupt practice or a wilful violation of sec. 96 of 37 Vic., cap. 9. (2) That M.'s agency was a limited one, and had ceased before the payment in question. *Halton*, 736.

COSTS.—1. The petition was dismissed, but owing to the unwise and imprudent acts of the respondent, he was allowed only one-half of the taxable costs. *Glengarry*, 8.

2. Where bribery by an agent is proved, costs follow the event, even though personal charges made against the respondent have not been proved, and there having been no additional expense occasioned to the respondent by such personal charges. *South Grey*, 52.

3. There being no grounds for charging the respondent personally with corrupt practices, and the scrutiny having been abandoned, the costs of those parts of the case were ordered to be paid by the petitioner. But with respect to the other costs, though the respondent was successful, the matters were proper to be inquired into in the public interest, and each party was left to pay his own costs. *East Toronto*, 70.

4. The election was sustained, but it being in the public interest that the matters brought forward should have been inquired into, and as the respondent had not exercised supervision over the expenditures in connection with the election, the petition was dismissed without costs. *West Toronto*, 97.

5. The petitioners were ordered to pay the costs of the respondent up to the meeting of the Election Court, and the costs of the special case; but as to the costs of the trial, each party was ordered to pay his own costs. *Monck*, 154.

6. The petitioner, after a special case had been reserved, appeared before the Judge trying the election petition, and consented to the aban-

donment of the special case and the dismissal of the petition with costs, and it was so ordered. *West York*, 156.

7. The respondent was ordered to pay the costs of the petition and trial, except the costs of issues found in his favor, part of which costs was to be paid by the petitioner to respondent, and part was to be borne by each of the parties. *Welland*, 187.

8. The costs of investigating charges of bribery against the respondent's election agent, though not established, were awarded against the respondent, owing to the equivocal conduct of his agent in the matters which led to the charges; also the costs of other charges of bribery which were not established, and the costs of proving that several tavern keepers, for their own profit, had violated sec. 66 of the Election Law of 1868, as the witnesses who gave evidence of these matters also gave evidence of other matters, as to which it was reasonable they should have been subpoenaed. *West Wellington*, 231.

9. The petitioner was declared entitled to the general costs of the inquiry, and the costs of the evidence incurred in proof of the facts upon which the election was avoided; but the costs incurred in respect of charges which the petitioner failed to prove were disallowed. *South Essex*, 235.

10. That as the petition had been rendered necessary by the mistakes of the Deputy Returning Officers, for which neither the petitioner nor respondent was responsible, each party should bear his own costs. *Russell* (2), 519.

11. During the progress of a scrutiny of votes, certain ballot papers, counterfoils and a voters' list were stolen from the court, which had the effect of rendering the proceedings in the scrutiny useless; and in disposing of the costs, the Court ordered the respondent to pay the costs up to the date the election was avoided, but that, under the circumstances of certain ballot papers having been stolen which rendered the scrutiny useless,

each party must bear his own costs of the scrutiny. *Lincoln* (2), 489.

12. Various acts of bribery and of colorable charity having been proved against the agents and sub-agents of the respondent, the election was set aside, with costs, including the costs of the evidence on the personal charges against the respondent. *Cornwall*, 547.

13. The respondent sought to establish, on an inquiry under a preliminary objection, that the petitioner (the opposing candidate) had been guilty of bribery, and was therefore disqualified as such. The inquiry was not concluded, as during its pendency the English Election Courts held that bribery would not disqualify a petitioner; but so far as the evidence went, while it disclosed such a large expenditure of money by the petitioner and his agents as to lead to the suspicion it was not all expended for the legitimate purposes of the election, it did not show bribery by the petitioner. The respondent then consented to his election being avoided on the ground of bribery by one of his agents without his knowledge or consent. *Held*, that the general rule as to costs should prevail, and that the respondent should pay the costs of the inquiry as well as the general costs of the cause. *South Renfrew*, 556.

14. The petitioners, after a notice from the respondent admitting bribery by one of his agents, examined witnesses on the personal charges, which were not proved, and in determining the question of costs, it was *held*, that as the petitioners might have come to court on the notice served by the respondent, and have asked to have the election set aside, and as they had attempted, but had failed, to establish the personal charges, the respondent should only pay such costs as he would have had to pay had the petitioners accepted the notice served upon them before the trial. *West Northumberland*, 562.

15. The election was set aside with costs, except as to the costs of certain charges which were unwarranted. A party, though success-

ful, is not entitled to the costs of all the witnesses he may subpoena, nor is the fact of their being called or not called the test of such costs being taxable. *Niagara*, 568.

16. The particulars not having been properly prepared, the petitioner, while obtaining the costs of the proceedings, was disallowed the costs of the particulars. *East Northumberland*, 577.

17. The petitioner having been warranted in continuing the inquiry as to the personal complicity of the respondent with the illegal acts of his agents, was held entitled to the full costs of the trial. *Kingston*, 625.

18. The petitioner was held entitled to the general costs of the petition, except as to the cases of the voters whose names were not on the voters' lists, and as to the scrutiny of ballots. *North Victoria* (2), 671.

19. The Returning Officer having acted fairly in rejecting the nomination paper in this case, each party to the petition was left to bear his own costs. *South Renfrew* (2), 705.

20. The petitioner was held entitled to the costs of the charges on which he succeeded, and the respondent to the costs of the charges on which the petitioner failed. *North Renfrew*, 710.

21. The petition was dismissed without costs, following the *Carrickfergus* case (21 L. T. N. S. 356; 1 O'M. & H. 264). *East Elgin*, 769.

22. The petitioner was allowed his costs, but not the costs of the charges which he failed to establish. *Cornwall* (3), 803.

See also pp. 187, 576.

CUSTOM OF THE COUNTRY. *See* pp. 47, 376, 625, 764.

DELEGATES TO CONVENTION. *See* pp. 187, 387, 420.

DEPUTY RETURNING OFFICERS. *See* pp. 519, 725, 764, 785.

DISQUALIFICATION.—(1.) **Of Candidate.**—1. The respondent while canvassing had refreshment for his men and two horses at a tavern for part of a day and a night, for which

he paid the tavern-keeper \$5, and next day \$5 more, in all \$10, without asking for a bill. The bill would have amounted to about \$3. The respondent stated that the tavern-keeper was an old friend of his, and was just starting in business, and that he thought it right to pay him as it were a compliment on his first visit to his tavern, and that he believed he would have done the same thing if it was not election time. *Held*, that being an isolated case in an election contest, free from profuse expenditure, and this being a quasi-criminal trial involving grievous results to the respondent if found a corrupt practice, such payment was not—after the explanations of the respondent—an act of bribery. *Glengarry*, 8.

2. The respondent entrusted about \$700 to an agent for election purposes without having supervised the expenditure. *Held*, that this did not make him personally a party within 34 Vic., cap. 3., sec. 46 to every illegal application of the money by the agent, or by those who received money from him. But if a very excessive sum had been so entrusted to the agent, the presumption of a corrupt purpose might have been reasonable. *South Grey*, 52.

3. A candidate in good faith intended that his election should be conducted in accordance both with the letter and the spirit of the law; and he subscribed and paid no money, except for printing. Money, however, was given by friends of the candidate to different persons for election purposes, who kept no account or vouchers of what they paid. *Held*, that bribery would not be inferred as against the candidate, who neither knew nor desired such a state of things, from the omission of these subordinate agents to keep an account of their expenditure, especially as the law was new, and contained no provision similar to the Imperial statute, which requires a detailed statement of expenditure to be furnished to the returning officer. But it is always more satisfactory to have the expenditure shown by proper vouchers; and if money is paid to voters for distributing cards,

or for teams, or for refreshments, these will be open to attack, and judges will be less inclined, as the law becomes known, to take a favorable view of conduct that may bear two constructions, one favorable to the candidate and the other unfavorable. *East Toronto*, 70.

4. The respondent, a postmaster in the service of the Dominion of Canada, became a candidate at an election on the 14th and 21st March, 1871, and was elected. On the 11th March he resigned his office of postmaster, which was accepted by the Postmaster-General on the 13th of March. His accounts with the Post Office Department were closed, and his successor appointed after the election. Evidence of the notoriety of the alleged disqualification of the respondent was given, which was that such alleged disqualification was a matter of talk, and that all the people at the meeting for the nomination of candidates were supposed to be aware of the supposed difficulty as to such disqualification. *Held*, that even if the respondent was disqualified for election, the Judge could not on such evidence declare that the electors voting for the respondent had voted perversely, and had therefore thrown away their votes, so as to entitle the petitioner to claim the seat. *West York*, 156.

5. Before subjecting a candidate to the penalty of disqualification, the Judge should feel well assured, beyond all possibility of mistake, that the offence charged is established. If there is an honest conflict of testimony as to the offence charged, or if acts or language are reasonably susceptible of two interpretations, one innocent and the other culpable, the Judge is to take care that he does not adopt the culpable interpretation unless, after the most careful consideration, he is convinced that in view of all the circumstances it is the only one which the evidence warrants his adopting as the true one. *Welland* (2), 187.

6. On a charge that the respondent offered to bribe the wife of a voter by a "nice present," if she would do what she could to prevent

her husband from voting, three witnesses testified to the offer; the respondent denied, and another witness who was present heard nothing of the offer. On this evidence, and there being no proof that the witnesses in support of the charge were acting from malicious motives or corrupt expectation, nor any evidence impeaching their veracity, the charge was held proved. *Halton*, 283.

7. The respondent appealed to the Court of Appeal on the above charge of personal bribery. *Held*, that as the Judge trying the petition had found that the respondent had made the offer to the wife of the voter in the manner above stated, such an offer was a promise of a "valuable consideration," within the meaning of the bribery clauses of 32 Vic., c. 21. *Ibid*.

8. On the polling day, and during the hours of polling, the respondent drove up to a tavern at C., where he met one S., a member of the above mentioned committee, and addressing him or the assembled people, said, "Boys, this is the first time I came to C. when I dare not treat, and some one will have to treat me." S. replied that he would treat, and, with the respondent and 30 or 50 people, went into the tavern, where S. treated some of the people, and the respondent drank with the rest. *Held*, (1) That going into the tavern for the purposes of the treat, when the law directed that such tavern should be kept closed, and joining in and accepting such treat, was a literal as well as a substantial violation of the law, and a corrupt practice. (2) That the concurrence of the respondent in the commission of such corrupt practice made him liable to the disqualification imposed by the statute for "a corrupt practice committed with the actual knowledge and consent of a candidate." *South Wentworth*, 343.

9. *Per Burton and Patterson*, J.J. A.—The 2nd subsec. of s. 3 of 36 Vic., c. 2, applies equally to the elected and defeated candidates at an election; and, if found assenting parties to any practice declared by

the statute to be corrupt, each of them is liable to the disqualifications mentioned in the statute. *Ibid*.

10. The respondent, during polling hours on the polling day, met one P., a supporter of the opposing candidate, and told him he would like a drink; and both of them, not thinking it illegal, went to a tavern, and the bar being closed, P. treated the respondent in the hall of the tavern. *Held*, by the Court of Appeal (reversing *Gwynne*, J.), that the receiving of a treat by the respondent during the hours of polling was a corrupt practice, and avoided the election. *North Grey*, 362.

11. The wife of one S., a voter, had been injured some years before the election by the horses of the respondent, and in 1872 the respondent gave S. compensation for the injury partly by cancelling a debt and partly in cash, for which S. signed a receipt "in full of all accounts and claims whatsoever." The respondent canvassed S. during the election, saying, "I would like to have you with me at the election," but S. declined, expressing dissatisfaction with the compensation made for the injury to his wife, to which the respondent replied that he was able to do, and could do, what was right. Afterwards the respondent sent his salesman to the wife of S., who told her that the respondent was still able to do justice, to which she replied she would write a letter, which she did, and in which she referred to her husband's vote. After the election the respondent gave S. \$30 partly by cancelling a debt and partly in cash. The respondent denied that he gave S. to understand that he would give him anything to induce him to vote for him at the election. *Held*, by the Court of Appeal (affirming *Gwynne*, J.), that the evidence showed that an indirect offer of money or other valuable consideration was made by the respondent to S., to induce him to vote for the respondent. *Lincoln*, 391.

12. At a late hour on the day preceding the election some agents of the respondent determined to resort to bribery, and they carried

out such determination at an early hour on the morning of the polling day. There was no evidence of the respondent's knowledge of, or consent to, this act of his agents. *Held* (reversing *Gwynne, J.*), that the shortness of the interval between the resolve and the execution of the bribery, which was carried out at a place several miles away from where the respondent lived, rendered improbable the fact of the respondent's actual knowledge of such bribery. *Ibid.*

13. The respondent stated at a public meeting of the electors with reference to an alleged local grievance, that he understood it to be the constitutional practice, here and in England, for the Ministry to dispense as far as practicable the patronage of the constituency on the recommendation of the person who contested the constituency on the Government side; and that he, being a supporter of the Government, would have the patronage in respect to appropriations and appointments whether elected or not. *Held*, that the respondent by such words did not offer or promise directly or indirectly any place or employment, or a promise to procure place or employment, to or for any voter, or any other person to induce such voter to vote, or refrain from voting. *Muskoka*, 458.

14. The evidence showed that extensive bribery was practised by the agents of the respondent and by a large number of persons in his interest, but no acts of personal bribery were proved against him, and he denied all knowledge of such acts. It was in evidence that he had warned his friends, during the canvass, not to spend money illegally. The Judge (*dubitante*) held that no corrupt practice had been committed with the respondent's knowledge or consent, and avoided the election for corrupt practices by the respondent's agents. *London*, 560.

15. On appeal to the Court of Common Pleas, it was *held*, (1) that the circumstantial evidence in this case was sufficient to show that corrupt practices had been committed by the respondent's agents with

his knowledge and consent. (2) That wilful intentional ignorance is the same as actual knowledge. (3) That the assent of a candidate to the corrupt acts of his agents may be assumed from his non-interference or non-objection when he has the opportunity. And such candidate's knowledge of and assent to the corrupt acts of his agents, may be established without connecting him with any particular act of bribery. *Ibid.*

16. The respondent, in a constituency where 642 persons voted, received 336 votes, and his election expenses were about \$2,000. The money was entrusted by the respondent to one G., with a caution to see that it was used for lawful purposes only. About \$1,200 of this money was given by G. to one W., who distributed it to several persons in sums of \$40, \$100, \$200 and \$250. No instructions as to expenditure were given by G. to W., or by W. to the persons amongst whom he distributed the money; and by the latter several acts of bribery were committed. The respondent publicly and privately disclaimed any intention of sanctioning any illegal expenditure; but made no inquiries after the election as to how the money had been spent until a week or two before the election trial. He denied any act of bribery, direct or indirect, or any knowledge thereof; and no proof was given of a personal knowledge on his part of any of the specific wrongful acts or payments proved to have been committed by the persons amongst whom his money had been distributed. *Held*, that under the peculiar circumstances of the respondent's canvass, and on a review of the whole evidence, the respondent's emphatic denial of any corrupt motive or intention should be accepted. *Niagara*, 568.

17. The respondent was charged with using means of corruption at his election (1) by giving up a promissory note and also \$20 to one M., on condition of M. and his sons voting for him; the charge depended upon the contradictory oaths of M. and the respondent; (2) by giving

a large subscription to an election fund, some of which was expended for illegal purposes; and (3) by subscriptions to churches. The respondent denied any corrupt motive in these subscriptions. The Election Judge, on the evidence, found that the respondent was not personally guilty of corrupt practices, but he avoided the election on the ground of bribery by agents. *South Huron*, 576.

18. From the judgment on the personal charges the petitioner appealed; but the Court, on a review of the evidence, declined to set aside the finding of the Election Judge. The appeal was dismissed without costs, as there were strong grounds for presenting it. *Ibid.*

19. *Per Hagarty*, C. J.—Candidates and agents should select less suspicious seasons than election times for exercising their liberality towards charitable and religious objects. *Ibid.*

20. The respondent was charged with corrupt practices, in that, when canvassing one C., a voter who said he would not vote unless he was paid, he said he was not in a position to pay him anything, but that if C. would support him, one of his (the respondent's) friends would come and see about it. The respondent, as he was leaving the voter's house, met one K., a supporter, who, after some conversation, went into C.'s house and gave him \$5 to vote for the respondent. The charge depended upon the evidence of the voter C. and his wife. The respondent denied making such a promise; and he was sustained by K. as to a conversation outside C.'s house, in which the respondent cautioned K. not to give or promise C. any money. The Election Judge on the evidence found that the respondent was not personally implicated in the bribery of the voter C. by K. *Centre Wellington*, 579.

21. Before an Election Judge finds a respondent or any other person guilty of a corrupt practice involving a personal disability, he ought to be free from reasonable doubt. *Ibid.*

22. It is a general rule that no man can be treated as a criminal, or mulcted in penal actions for offences which he did not connive at; and it is settled law that enactments are not to be given a penal effect beyond the necessary import of the terms used. But the Election Laws are not to be so limitedly construed by an Election Judge; and for civil purposes they are more comprehensive, and reach a candidate whose agents bribe in his behalf, with or without his authority. Where the disqualification of a candidate is sought these laws are to be construed as any other penal statutes, and the candidate must be proved guilty by the same kind of evidence as applies to penal proceedings. *Kingston*, 625.

23. Money had been contributed by the respondent and by his friends for the purposes of the election, which had been placed in the hands of one C., a personal and political friend of respondent, who gave it without any instructions or warnings to such committee-men as applied for it. A great deal of this money was spent in corrupt purposes, in bribery, and in treating, to the extent of avoiding the election. The respondent in his evidence stated that he did not, directly or indirectly, authorize or approve of or sanction the expenditure of any money for bribery, or a promise of any for such purpose, nor did he sanction or authorize the keeping of any open house, and that he was not aware that any open houses had been kept, and that he always impressed on everybody that they must not violate the law. There was no affirmative evidence to show that the money which the respondent knew had been raised for the purposes of the election was so large that as a reasonable man he must have known that some portion of it would be used for corrupt purposes. *Held*, that looking at the whole case, and at this branch of it, as a penal proceeding, the respondent should not be held personally responsible for the corrupt practices of his agents.—*Ibid.*

24. An election was held in January, 1874, under the Act of

1873, at which the petitioner and the respondent were candidates, and at which the respondent was elected. This election was avoided on the ground of corrupt practices by agents of the respondent, committed without his knowledge or consent (*ante* p. 547). A new election was held, under the Act of 1874, at which the petitioner and the respondent were again candidates, when the respondent was again elected. Thereupon another petition was presented, charging that the respondent was guilty of corrupt practices at this last election; that he was ineligible by reason of the corrupt acts of his agents at the former election; that persons reported guilty of corrupt practices at the former election trial had improperly voted at the last election; and claiming the seat for the petitioner. *Held*, on preliminary objections, that the two elections were one in law; and it was not material that they had been held under different Acts of Parliament. *Cornwall* (2), 647.

25. That the respondent was not ineligible for re-election, as the corrupt practices of his agents at the former election had been committed without his knowledge or consent. *Ibid*.

26. The respondent gave certain gifts and charities to a religious community, a church, and certain local associations, none of which were political; the election was never mentioned. *Held*, that where charitable donations are given generally, and not with a view to influence any individual voter, they will not vitiate an election. There must be such large and indiscriminate gifts as to leave no doubt on any one's mind that the effect had been to constitute general bribery; and there was no evidence of such gifts or expenditure in this case. *South Ontario*, 751.

— (2) Of Agent.—The election having been declared void on account of the corrupt practices of an agent of the respondent, the Judges acting as a Court for the trial of illegal acts committed at the election, after notice to such agent,

granted an order for the punishment of such agent by fine and disqualification. *Stormont* (2), 537.

See also p. 238.

— (3) Of Petitioner.—1. An objection to the *status* of a petitioner cannot be taken by preliminary objection. *Dufferin*, 529.

2. A petitioner in an election petition who has been guilty of corrupt practices at the election complained of, does not thereby lose his *status* as a petitioner. *Ibid*.

3. Except where there are recriminatory charges against the unsuccessful candidate, or for the purpose of declaring the petitioner's vote void on a scrutiny, the conduct of a petitioner at an election cannot be inquired into. And in this case there is no distinction between a candidate-petitioner and a voter-petitioner. *Ibid*.

4. *Seemle*, That if the petitioner in this case was proved at the trial of the election petition to have been guilty of corrupt practices at the election complained of, the petition could not be dismissed. *Ibid*.

5. A duly qualified voter is not disqualified from being a petitioner, on the ground that he has been guilty of bribery, treating or undue influence, during the election. *North Simcoe*, 617.

6. Disqualifications from corrupt practices on the part of a voter or candidate arise after he has been found guilty, and there is no relation back. *Ibid*.

7. In order to disqualify the petitioner from acting as such, the respondent offered to prove (1) that the petitioner had been reported by the Judge trying a former election petition as guilty of corrupt practices; (2) that the petitioner had in fact been guilty of corrupt practices at such election; and (3) that the petitioner had been guilty of corrupt practices at the election in question. *Held*, that such evidence, if offered, would not disqualify the petitioner as such. *Held*, further, that as the petitioner did not claim the seat, evidence could not be gone into for the purpose of personally disqualifying him. *Cornwall* (3), 803.

DIVISION COURT BAILIFFS.—Observations on the impropriety of Division Court bailiffs canvassing voters during an election. *North Victoria*, 612.

ELECTION ACCOUNTS.—Where all the accounts and records of an election are intentionally destroyed by the respondent's agent, even if the case be stripped of all other circumstances, the strongest conclusions will be drawn against the respondent, and every presumption will be made against the legality of the acts concealed by such conduct. *South Grey*, 52.

ELECTION AGENT.—The Act 36 Vic., c. 2, ss. 7-12, requires that all election expenses of candidates shall be paid through an election agent; and the Act 38 Vic., c. 3, s. 6, requires the member-elect to swear that he had not paid and will not pay election expenses except through an agent, and that he "has not been guilty of any other corrupt practice in respect of the said election." Certain payments were made by the respondent personally, and not through an election agent. *Held*, that such payments were not corrupt practices; *Held* also, that the words "other corrupt practices" in the member's oath meant "any corrupt practice." *West Hastings*, 211.

ELECTION COMMITTEE DECISIONS.—The effect of s. 30 of 34 Vic., c. 3, O., is that the Judge is to act on the principles upon which election committees in England have acted where he has no light from the rules which his own professional experience supplies him with. And he is in addition to be bound by the decisions of the Rota Judges in England trying elections under acts similar to our own, in the same way as the Courts feel bound by their judicial decisions in other legal matters. *West Toronto*, 97.

ELECTION EXPENSES.—The difference between the Imperial statute (17 and 18 Vic., c. 102, s. 2, subs. 3, proviso) and the Ontario statute (32 Vic., c. 21, s. 67, subs. 3, proviso), as to "legal expenses"

in elections, pointed out. *East Toronto*, 70.

See also pp. 70, 211, 785, 800.

ELECTION LAW.—1. The common law of England relating to Parliamentary elections is in force in Ontario, and applies to elections for the House of Commons. *Cornwall*, 547.

2. The Dominion Elections Act of 1874 does not affect the rights of parties in pending proceedings, which must be decided according to the law as it existed before the passing of that Act; sec. 20 of that Act referring to candidates at some future election. *North Victoria*, 584.

3. The Election Law is not to be construed as a penal law. *Kingston*, 625.

4. The Imperial and Dominion Election Laws, as to corrupt practices and their consequences, compared and considered. *Ibid*.

See also pp. 211, 800.

EMPLOYMENT OF VOTERS.—1 The friends of the candidate formed themselves into committees, and some of them voluntarily distributed cards and canvassed different localities, with books containing lists of voters, noting certain particulars as to promises, etc. These canvassers often met voters in public houses, and while there, according to custom, treated those whom they found there, and thus spent their money as well as their time. On this being represented to those who had charge of the money for election expenses, the latter, in several cases, reimbursed the canvassers. *Held*, that these general payments, if not exceeding what would be paid to a person for working the same time in other employments, would not be such evidence of bribery as to set aside an election. *East Toronto*, 70.

2. The *bona fide* employment and payment of a voter to canvass voters belonging to a particular religious denomination, or to the same trade or business, or to the same rank in life, or to canvass voters who only understand the French or Celtic

languages, is not illegal. *West Toronto*, 97.

3. The fact that such a voter has skill or knowledge and capacity to canvass would not make his employment illegal. *Ibid.*

4. The candidate is not restricted to his purely personal expenses, but may (if there is no intent thereby to influence voters, or to induce others to procure his return) hire rooms for committees and meetings, and employ men to act as canvassers, to distribute cars and placards, and to perform similar services in connection with the election. *Ibid.*

5. The respondent and one M. employed one H., a lawyer and professional public speaker and a voter, to address meetings in the respondent's interest, and promised to pay H.'s travelling expenses, if it were legal to do so. *Held* (by the Supreme Court, reversing *Armour*, J.), that such a promise was not bribery (4 Sup. Ct. R. 430). *North Ontario*, 785.

6. *Per Armour*, J.—The hiring of orators or canvassers at an election is illegal. *Ibid.*

See also pp. 97, 274, 458, 736.

✓ **EVIDENCE.**—1. A notarial copy of an assignment in insolvency may be received in evidence under C. S. C. c. 80, s. 2. *Prescott*, 1.

2. The writ of election and return need not be produced or proved before any evidence of the election is given. *Stormont*, 21.

3. A witness called on a charge in the particulars of giving spirituous liquors in a certain tavern on polling day, during polling hours, cannot be asked if he got liquor, during polling hours, in other taverns. *South Oxford*, 243.

4. Evidence of admissions made by an agent after his agency had expired is inadmissible. *West Peterboro*. 274.

5. A witness stated that he had received a letter from a voter, asking for the fulfilment of an offer as to his vote, but the letter was not produced. *Held*, that it was not proved that the letter in question was written by the voter referred to. *North Middlesex*, 376.

6. The respondent was charged with several acts of corrupt practices. Each separate charge was supported by the evidence of one witness, and was denied or explained by the respondent. The learned Judge trying the petition held, that if each case stood by itself, oath against oath, and each witness equally credible, and there being no collateral circumstances either way, he would have found that each case was not proved; but as each charge was proved by a credible witness, the united weight of their testimony overcame the effect of the respondent's denial: and on the combined testimony of all the witnesses, he held the separate charges proved against the respondent. *Held*, by the Court of Appeal (reversing *Wilson*, J.), that in election cases, each charge constitutes in effect a separate indictment, and if a Judge on the evidence in one case dismisses the charge, the respondent cannot be placed in a worse position because a number of charges are advanced, in each of which the Judge arrives at a similar conclusion, and therefore the separate charges above referred to were held not sustained. *Muskoka*, 458.

7. A candidate, when examined as a witness at an election trial, may be asked his expenditure at former Provincial and Dominion elections at which he was a candidate. *North Simcoe*, 624.

8. A number of separate charges of corrupt practices against an agent of the respondent, based upon offers or promises, and not upon any act of such agent, each of which depended upon the oath of a witness to the offer or promise, but each one of which such agent directly contradicted, or gave a different color to the language, or a different turn to the expressions used, which quite altered the meaning of the conversations detailed, or constituted in effect a complete or substantial denial of the charges attempted to be proved against such agent. *Held*, (1) That although in acting on such conflicting testimony, where there was a separate opposing witness in each case to the testimony of the witness supporting the

charge, the Election Judge might be obliged to hold each charge as answered and repelled by the counter evidence, he could not give the like effect to the testimony of the same witness in each of the cases where the only opposing witness is confronted by the adverse testimony of a number of witnesses, who, though they do not corroborate one another by speaking to the same matter, are contradicted in each case by the one witness. (2) That the more frequently a witness is contradicted by others, although each opposing witness contradicts him on a single point, the more is confidence in such witness affected, until, by a number of contradicting witnesses, he may be disbelieved altogether. (3) That acting on the above, and on a consideration whether the story told by the witness in support of the charge is reasonable or probable in itself, the charges of corrupt practices against the agent of the respondent, set out in the judgment, were proved. *North Renfrew*, 710.

EXCESSIVE EXPENDITURE.—*See* pp. 52, 70, 547, 556, 568, 576.

FREE DINNER.—*See* p. 671.

HIRING RAILWAY TRAIN.—*See* pp. 50, 555.

HIRING TEAMS.—*See* CORRUPT PRACTICES (5).

ILLEGAL AND PROHIBITED ACTS.

—1. "Illegal and prohibited acts relating to elections," in the definition of corrupt practices in the Controverted Elections Act, 1871, are confined to bribery, hiring of teams, and undue influence, as defined by secs. 67 to 74 of the Election Act of 1868. *North York*, 62.

2. Violations of section 61 (treating at meetings) and section 66 (giving or selling liquor at taverns on polling day) are not corrupt practices within the meaning of the said Acts, unless committed in order to influence voters at the election complained of. *Ibid.*

3. The words "illegal and prohibited acts in reference to elections," used in sec. 3, mean such

acts done in connection with, or to affect, or in reference to elections; not all acts which are illegal and prohibited under the election law. *Brockville*, 139.

See now R.S.O., c. 11, s. 2, subs. 6.

INTENT.—*See* pp. 8, 52, 70, 97, 139, 214, 269, 283, 362, 376, 391, 547, 612, 625, 660, 671.

IRREGULARITIES.—The neglect or irregularities of a deputy returning officer in his duties under the Dominion Elections Act, 1874, will not invalidate an election, unless they have affected the result of the election or caused some substantial injustice. *Monck*, 725.

See also pp. 519, 764.

LEGAL AND PERSONAL EXPENSES.—*See* pp. 70, 97, 785, 800.

MEMBER'S OATH.—*See* p. 211.

MEETINGS AT TAVERNS.—Meetings for promoting the respondent's election were held at public houses with the object of inducing the owners to support the respondent at the election, and because the weather was cold and meetings could not be held in the open air. No evidence was given by the petitioner that equally convenient places, and such as were more proper to be used for that purpose, could be obtained. *Held*, that as the respondent and his friends had a legitimate motive for holding their meetings at such houses, although their other motives might not be legitimate, no corrupt act had been committed. *Kingston*, 625.

MEETINGS FOR PROMOTING ELECTION.—*See* pp. 187, 205, 231, 245, 252, 283, 304, 362, 376.

NEW TRIAL.—1. Charges of corrupt practices, consisting of promises of money and of employment, were made against the respondent and one M., his agent. Both the respondent and his agent denied making any promises of money, but left the promises of employment unanswered; and the Judge trying the petition (*Draper*, C. J. A.) so found,

and avoided the election. Thereupon the respondent appealed to the Court of Appeal, and under 38 Vic., c. 3, s. 4, offered further evidence by affidavit, specifically denying any offer or promise, directly or indirectly, of employment. *Draper, C. J. A.*, who tried the petition, having intimated to the Court that had the respondent and his agent made the explicit denial as to offers of money or employment which it appeared they had intended making, he would have found for the respondent. *Held*, under these circumstances, that the finding of the Election Court should be set aside, and that a new trial should be held before another Judge on the *rota*. *Peel*, 485.

2. Observations on the difference between an election trial and a trial at Nisi Prius. *Ibid*.

NOMINATION PAPER.—The nomination paper of B., one of the candidates at the election complained of, was signed by twenty-five persons, and had the affidavit of the attesting witness duly sworn to as required by the statute. The election clerk found that one of the twenty-five persons was not entered on the voters' lists, and thereupon the returning officer and election clerk compared the names on the nomination paper with the certified voters' lists in his possession, and on finding that only twenty-four of the persons who had so signed were duly qualified electors, he rejected B's. nomination paper, and returned the respondent as member elect. *Held*, (1) That as the policy of the law is to have no scrutiny, or as little as possible, in election cases, and to give the people a full voice in choosing their representatives, the defect in the nomination paper was one to which the returning officer should not have yielded. (2) That if the election had gone on the defect in the nomination paper would not, according to the 20th section of 37 Vic., c. 9, have affected the result of the election. *South Renfrew* (2), 705.

NOTICE ADMITTING BRIBERY.—*See pp. 562, 624.*

ORATORS AND CANVASSERS.—*See p. 785.*

PARTICULARS.—1. Where a question is raised as to the sufficiency of the notice of objection to voters, the Judge may amend the particulars, giving time to the party affected by the amendment to make inquiries. *Stormont*, 21.

2. At the trial of the petition, an amendment of the particulars as to corrupt practices will be allowed; and if the respondent is prejudiced by the surprise, terms may be imposed. *Welland*, 47.

3. An objection that the persons objected to were not owners, tenants, or occupants within s. 5, excluded an objection as to the value of the assessed property. *South Grenville*, 163.

4. Where a son was assessed at \$700 for a farm in which he and his father were partners, in the proportion of three-fourths of the profits to the father and one-fourth to the son, and the objection to the voter was non-ownership. *Held*, that the partnership was established by the evidence, and in view of the objection taken, the vote was sustained.—*Smales' vote. Ibid.*

5. When the petition claimed the seat for the unsuccessful candidate on the grounds that (1) illegal votes and (2) improperly marked ballots were received in favor of the successful candidate; that (3) good votes and (4) properly marked ballots for the unsuccessful candidate were improperly refused; and that (5) the successful candidate and his agents were guilty of corrupt practices, and particulars of all such votes and ballots and corrupt practices were asked from the petitioner. *Held*, (1) As to the illegal votes, that the 7th General Rule prescribed the particulars of objected votes to be given, and the time of filing and delivering the same, and a special order was not therefore necessary. (2) As to the improperly marked ballots and improperly rejected ballots, the petitioner not having information respecting them, could not be ordered to deliver particulars of the same. (3) Particulars were ordered of the names, address,

abode and addition of persons having good votes, whose votes were improperly rejected at the polls; and particulars of the corrupt practices charged by the petitioner against the respondent and his agents. *Beal v. Smith*, L.R. 4 C.P. 145 (*Westminster case*), followed. *West Elgin*, 223.

6. Where particulars were delivered after the time limited by the order for particulars, and not returned, an application made at the trial to set them aside was refused: such application should have been made in Chambers before the trial. *North Victoria*, 252.

7. Particulars of recriminatory charges delivered after the time limited by the order for such particulars were allowed, but the petitioner was allowed to apply for time to answer the charges therein contained, and was given such costs as had been occasioned by the granting of the application. *Ibid*.

8. On the trial of an election petition, evidence was given by both sides on a charge not properly set out in the petitioners' particulars of corrupt practices. At the close of the evidence the respondent objected that the charge was not in the particulars, and that it was not verified by the affidavit of the petitioners: *Held*, (1) That the petitioners might amend their particulars, and that the charges in the petition were wide enough to cover the charge. (2) That as to this charge, the parties had in fact gone into evidence without particulars, and that the petitioners' affidavit verifying the particulars was not necessary. *Lincoln* (2), 489.

9. On an application by the petitioner to amend the particulars by adding charges of bribery against the respondent personally, and his agents, his attorney made affidavit that different persons had been employed to collect information; that the new particulars only came to his knowledge three days before the application; and that he believed they were material to the issues joined. *Held*, that as it was not shown that the petitioner or the persons employed could not have given the attorney the information

long prior to the application, and as it was not sworn that the charges were believed to be true, nor were they otherwise confirmed, and as the amendment might have been moved for earlier, the application should be refused. *South Norfolk*, 660.

PARTIES.—The petition, besides charging the respondent with various corrupt acts, charged one of his agents with similar acts, and claimed that the agent was subject to the same disqualifications and penalties as a candidate. The prayer of the petition asked that this agent might be made a party to the petition, and that he might be subjected to such disqualifications and penalties. *Held*, (1) That there is no authority in the Election Acts or elsewhere, for making an agent of a candidate a respondent in a petition on a charge of personal misconduct on his part. (2) There is no authority given to the Election Court or the Judge on the *rota* to subject a person "other than a candidate" to such disqualifications. (3) The Judge's report to the Speaker as to those persons "other than the candidate," who have been proved guilty of corrupt practices, is not conclusive, so as to bring them within 34 Vic., cap. 3, sec. 49, and so render them liable to penal consequences. *South Oxford*, 238.

PAYMENT OF DEBT.—*See* pp. 97, 205, 252, 304, 612, 751, 785.

PERSONAL OBJECT OF AGENT.—*See* pp. 139, 262, 269.

PERSONATION.—*See* p. 274.

PETITION.—(1) *Bona Fides.*—A charge that the petition was not signed by petitioner *bona fide*, but that his name was used *mala fide* by other persons, is a matter of fact to be tried, and cannot be raised by preliminary objection. *North Simcoe*, 617.

— (2) *Amendment.*—The Judge trying an election petition has power to amend the petition by allowing the insertion of any objection to the voters' lists used at the election. *Monck*, 154.

— (3) **Withdrawal.**—The Court recommended the petitioner to withdraw his petition in this case; and on an application for that purpose, another elector having applied to be substituted as petitioner: *Held*, that as the Court of Appeal had been placed in possession of all the charges against the respondent, and of the evidence in support of them, and had recommended the withdrawal of the petition, and no sufficient additional grounds having been shown for such substitution of petitioner, the order for the withdrawal of the petition should be granted. *Peel*, 485.

— (4) **Trial of.**—1. When a Rule of Court has been issued under the Controverted Elections Act, appointing a place for the trial not within the constituency the election for which is in question, the Judge by whom the petition is being tried has no power to adjourn, for the further hearing of the cause, from the place named in the Rule of Court to a place within such constituency. *South Grey*, 52.

2. The day appointed for the trial of an election petition may be altered to an earlier day by consent of the parties, and by an order of the Judge. *West Elgin*, 223.

PLEADING.—The 6th General Rule in Election Cases does not preclude the statement of evidence in the petition; it renders it unnecessary, and is intended to discourage such pleading. *South Oxford*, 238.

POSTMASTER.—See p. 158.

PRELIMINARY OBJECTIONS.—As the Ontario Act (R. S. O., c. 11) makes no provision similar to that in the Dominion Controverted Elections Act, 1874 (37 Vic., c. 10, Can.), limiting the time within which preliminary objections to an election petition should be taken, the special circumstances of each case must determine whether the preliminary objections have been taken with sufficient promptitude. *Dufferin*, 529.

See also pp. 1, 529, 531, 556, 577, 584, 617, 644, 647, 749, 803.

PRESENT (1) To Voter's Wife.—See pp. 97, 283, 736.

— (2) **To Voter's Relative.**—See pp. 8, 252.

PROPERTY QUALIFICATION.—1. A candidate may be a petitioner although his property qualification be defective, if it was not demanded of him at the time of his election. If he claims the seat, his want of qualification may be urged against his being seated, but he may still show that the respondent was not duly elected, if he so charge in his petition. *North Victoria*, 584.

2. *Held*, (1) As in the *North Victoria* case (*ante* p. 584), that the Dominion Elections Act of 1874 not being retrospective, the question of property qualification of candidates, at elections for members of the House of Commons held before the passing of the Dominion Election Act of 1873, can still be raised in pending cases. (2) That it is not necessary for an elector, demanding the property qualification of a candidate, to tender the necessary declaration for the candidate to make; the intention of the statute being that the candidate must prepare his own declaration. *Cardwell*, 644.

See now Dom. Elec. Act, 1874, s. 20.

RECEIVER OF TREAT.—See pp. 179, 245, 420.

RECOUNT OF BALLOTS.—See pp. 519, 764.

RECRIMINATORY CASE.—1. The respondent, on the opening of the case, charged that the petitioner was a candidate at the election, and as such candidate was guilty of corrupt practices, and therefore disqualified to be a petitioner. The Chief Justice, without deciding whether the respondent had the right to attack the qualification of the petitioner, allowed the evidence to be given, but *held* the same to be insufficient. *Prince Edward*, 45.

2. Where a charge of corrupt practices by way of a recriminatory case is alleged by a respondent against a petitioner, it may be reserved until the conclusion of the petitioner's case. *North Simcoe*, 50.

3. Where the right of the petitioner to claim the seat is decided adversely in one case, it is no prejudice to the respondent's case that other charges against the petitioner are not pronounced upon. *North Victoria*, 252.

4. Recriminatory charges are permitted in the interest of electors, in order to prevent a successful petitioner obtaining the vacated seat if he has violated any provision of the Election Law. *Ibid.*

See also pp. 529, 584, 617, 803.

REFRESHMENTS TO VOTERS.—

See pp. 52, 205, 252, 671.

REFUSAL TO SWEAR.—See p. 780.

RESULT OF ELECTION.—See pp. 489, 530, 539, 705.

RETURNING OFFICER.—*Seemle*, that the returning officer is both a ministerial and a judicial officer; and that he might decline to receive the nomination of persons disqualified by *status* or office, and also nomination papers signed by unqualified persons if he had good reasons for so doing. *South Renfrew* (2), 705.

✓ SCRUTINY.—1. On a scrutiny the practice is for the person in a minority to place himself in a majority, and then for the person thus placed in a minority to strike off his opponent's votes. *Stormont*, 21.

2. The Court having compared the Voters' List of 1870 with the poll books used at the election in the Township of Hillier, found that 35 persons had voted for the respondent whose names were not on the list of 1870; and the names of such persons having been struck off the poll, the respondent was found to be in a minority; and the seat was thereupon awarded to the other candidate, he having obtained on the scrutiny a majority of the votes. *Prince Edward*, 160.

3. Where a petition claims the seat for the unsuccessful candidate, a scrutiny of votes may be ordered to be taken in each municipality by the Registrar acting for the Judge on the *rota*. *West Elgin*, 227.

4. During the scrutiny of votes the respondent abandoned the seat

to his opponent, after his opponent had secured a majority of 8 votes, and agreed that such should stand as his opponent's majority, and that the Court should declare such opponent duly elected; and the same was ordered by the Court. *Ibid.*

5. During the progress of a scrutiny of votes, certain ballot and other papers were stolen from the Court, which had the effect of rendering the scrutiny useless. *Lincoln* (2), 489.

6. Particulars for a scrutiny of votes were delivered by the respondent objecting to certain voters, as (1) aliens; (2) minors; (3) not owners, tenants or occupants of the property assessed to them; and (4) farmers' sons not residing with their fathers upon the farm, as required by law. On a motion to strike out such particulars: *Held*, that under the "Voters' Lists Finality Act" (41) Vic., c. 21, s. 3, the legality of the votes so objected to could not be inquired into, and that the particulars should be struck out. *South Wentworth*, 531.

7. A petitioner claiming the seat on a scrutiny may show, as to votes polled for his opponent: (1) That the voter was not 21 years of age; (2) that he was not a subject of Her Majesty by birth or naturalization; (3) that he was otherwise by law prevented from voting; and (4) that he was not actually and *bona fide* the owner, tenant, or occupant of the real property in respect of which he assessed. *North Victoria*, 584.

See also p. 531, and 41 Vic., c. 21, O.

8. On a preliminary objection to a petition claiming the seat on a scrutiny, the Court declined to strike out a clause in the petition which claimed that votes of persons guilty of bribery, treating and undue influence, should be struck off the poll. The giver of a bribe, as well as the receiver, may be indicted for bribery. *Ibid.*

9. Evidence of corrupt practices committed by persons in the interest of both candidates at the previous election, may be given at the

trial of the second petition, with the view of striking off the votes of any such persons who may have voted at the second election. *Cornwall* (2), 647.

SECURITY.—The security in this case was offered, in the shape of a Dominion note for \$1,000, to the Registrar of the Court of Chancery, who stated to the petitioners' solicitors that he could not receive it, but directed them to make payment of it through the Accountant of the Court in the same manner as moneys were usually paid into court. The solicitors then paid the money into the bank to the credit of the matter of the petition, according to the usual practice of the Court of Chancery. *Held*, that the deposit of the security, as required by the Act, was properly given. *North York*, 749.

SPEAKER (1) **Report to.**—The fact of persons having been reported by the Judge as guilty of corrupt practices at the former election, has not the effect of disqualifying them from voting at the second election. The report of the Judge is not as to them an adjudication, for voters are not, in a proper judicial sense, parties to the proceedings at an election trial. *Cornwall* (2), 647.

See also pp. 238, 562.

—(2) **Certificate to.**—The Court cannot grant an interim certificate declaring an election void, as the statute contemplates only one certificate to the Speaker, certifying the result of the election trial. *Lincoln* (2), 489.

SPECIAL CASE.—1. A special case may be reserved for the opinion of the Court of Queen's Bench only when the Judge presiding at the election trial has a serious doubt as to what the law is, or believes that the Court might entertain a different opinion from that of the Election Judge. *North York*, 62.

2. *Quære*, whether, under 34 Vic., cap. 3, sec. 20, the Rota Judge has power, before the close of the case, to reserve questions for the Court. *Brockville*, 139.

3. Where a class of persons affected by the decision of a case is numerous, and the question involved is one of general importance, the Judge may reserve a special case for the opinion of the Court of Queen's Bench; and the Judge here decided to take that course. *West York*, 156.

See also p. 725.

STOLEN BALLOT PAPERS.—See p. 489.

SUBSTITUTION OF PETITIONER.—See p. 485.

TELEGRAMS.—The Court ordered the agent of a telegraph company to produce all telegrams sent by the respondent and his alleged agent during the election, reserving to the respondent the right to move the Court of Appeal on the point; the responsibility as to consequences, if it were wrong so to order, to rest on the petitioner. *South Oxford*, 243.

TENDERED VOTES.—1. Where a voter offered to vote at a poll, but did not ask for or put in a tendered ballot paper. *Held*, that the Ballot Act required the vote to be given secretly, and that the parol declaration of the voter as to his vote could not be received in order to add it to the poll.—*Secord's vote*. *Lincoln* (2), 500.

2. The names of certain persons who were qualified to vote at the election appeared on the last revised assessment roll of the municipality, but were omitted from the voters' list furnished to the deputy returning officer and used at the election. They tendered their votes at the poll, but their votes were not received; and a majority of them stated to the deputy returning officer that they desired to vote for the petitioner. The petitioner had a majority without these votes. *Held*, by the Court of Queen's Bench (affirming *Wilson, J.*), no ground for setting aside the election. *North Victoria* (2), 671.

3. *Semble*, (1) That, though the only mode of voting is by ballot, if it became necessary to decide the

election by determining the right to add these votes, it should be determined in that manner most consistent with the old law, and which would have saved the disfranchisement of electors, and the necessity of a new election. (2) If the right of voting can only be preserved by divulging from necessity for whom the elector intended to vote, the necessity justifies the declaration the elector is forced to make, as there is nothing in the Act which prevents the elector from saying for whom he intends to vote. (3) An elector duly qualified, who has been refused a ballot paper by the deputy returning officer, cannot be deprived of his vote; otherwise it would follow that because the deputy returning officer had wrongfully refused to give such elector a ballot paper, his vote would not be good in fact or in law. *Ibid.*

See also p. 780.

TAVERN-KEEPER.—See pp. 8, 139, 187, 199, 231, 252, 269, 362, 391, 420, 500, 671.

TREATING.—See CORRUPT PRACTICES (3).

UNDUE INFLUENCE.—See CORRUPT PRACTICES (4).

VOTER.—1. The Election Law of 1868, by the term "owner," gives to a husband whose wife has an estate for life or a greater estate, the right to vote in respect of his wife's property; and that the petitioner having that qualification, and being in possession of his wife's estate, was held entitled to petition. *Prescott*, 1.

2. The name of the voter being on the poll book is *prima facie* evidence of his right to vote. The party attacking the vote may either call the voter, or offer any other evidence he has on the subject. *Stormont*, 21.

3. A voter being duly qualified in other respects, and having his name on the roll and lists, but by mistake entered as tenant instead of owner or occupant, or *vice versa*, is not disfranchised merely because his name was entered under one head and not another. *Ibid.*

4. Where father and son live together on the father's farm, and the father is in fact the principal to whom money is paid, and who distributes it as he thinks proper, and the son has no agreement binding on the father to compel him to give the son a share of the proceeds of the farm, or to cultivate a share of the land, but merely receives what the father's sense of justice dictates: *Held*, the son has no vote.—*Eamon's vote. Ibid.*

5. In a milling business where the agreement between the father and son was, that if the son would take charge of the mill, and manage the business, he should have a share of the profits, and the son, in fact, solely managed the business, keeping possession of the mill, and applying a portion of the proceeds to his own use: *Held*, that the son had such an interest in the business, and, while the business lasted, such an interest in the land, as entitled him to vote.—*Bullock's vote. Ibid.*

6. Where a certain occupancy was proved on the part of the son distinct from that of the father, but no agreement to entitle the son to a share of the profits, and the son merely worked with the rest of the family for their common benefit: *Held*, that although the son was not merely assessed for the real but the personal property on the place (his title to the latter being on the same footing as the former), he was not entitled to vote.—*Raney's vote. Ibid.*

7. Where the objection taken was, that the voter was not at the time of the final revision of the assessment roll the *bona fide* owner, occupant or tenant of the property in respect of which he voted; and the evidence showed a *joint* occupancy on the part of the voter and his father on the land rated at \$240: *Held*, that the notice given did not point to the objection that if the parties were joint occupants they were insufficiently rated, and as the objection to the vote was not properly taken, the vote was held good.—*Baker's vote. Ibid.*

8. Where the father had made a will in his son's favor, and told the

son if he would work the place and support the family he would give it to him, and the entire management remained in the son's hands from that time, the property being assessed in both names—the profits to be applied to pay the debt due on the place : *Held*, that as the understanding was that the son worked the place for the support of the family, and beyond that for the benefit of the estate, which he expected to possess under his father's will, that he did not hold immediately to his own use and benefit, and was not entitled to vote.—*Weort's vote. Ibid.*

9. Where the voter had only received a deed of the property on which he voted on the 16th August, 1870, but previous to that date had been assessed for and paid taxes on the place, but had not owned it : *Held*, that not possessing the qualification at the time he was assessed, or at the final revision of the roll, he was not entitled to vote.—*Cahey's vote. Ibid.*

10. Where the voter had been originally, before 1865 or 1866, put upon the assessment roll merely to give him a vote, but by a subsequent arrangement with his father, made in 1865 or 1866, he was to support the father, and apply the rest of the proceeds to his own support : *Held*, that if he had been put on originally merely for the purpose of giving a vote, and that was the vote questioned, it would have been bad ; but being continued several years after he really became the occupant for his own benefit, he was entitled to vote, though originally the assessment began in his name merely to qualify him.—*Gore's vote. Ibid.*

11. Where the voter was the equitable owner, the deed being taken in the father's name but the son furnishing the money, the father in occupation with the assent of his son, and the proceeds not divided : *Held*, that being the equitable owner, notwithstanding the deed to the father, he had the right to vote. *Held* also, that being rated as tenant instead of owner did not affect his vote.—*Blair's vote. Ibid.*

12. Where the voter and his son leased certain property, and the lease was drawn in the son's name alone, and when the crops were reaped the son claimed they belonged to him solely, the voter owning other property, but being assessed for this only and voting on it : *Held*, that although he was on the roll and had the necessary qualification, but was not assessed for it, he was not entitled to vote.—*Hill's vote. Ibid.*

13. Where the voter was the tenant of certain property belonging to his father-in-law, and before the expiration of his tenancy the father-in-law, with the consent of the voter (the latter being a witness to the lease), leased the property to another, the voter's lease not expiring until November, and the new lease being made on the 28th March, 1870 : *Held*, that after the surrender by the lease to which he was a subscribing witness, he ceased to be a tenant on the 28th of March, 1870, and that to entitle him to vote he must have the qualification at the time of the final revision of the assessment roll, though not necessarily at the time he voted, so long as he was still a resident of the electoral division.—*Rupert's vote. Ibid.*

14. Where a verbal agreement was made between the voter and his father in January, 1870, and on this agreement the voter from that time had exercised control, and took the proceeds to his own use, although the deed was not executed until September following : *Held*, entitled to vote.—*Gollinger's vote. Ibid.*

15. Where a voter properly assessed, who was accidentally omitted from the voters' list, for polling division No. 1, where his property lay, and entered on the voters' list for polling division No. 2, voted in No. 1, though not on the list, his vote was held good. *Brockville, 129.*

16. A's name appeared on the assessment roll and voters' list as owner, but no property appeared opposite his name ; just below A's name, the name of B. was entered as tenant, with certain property following it, but B's name was not

bracketed with A.'s. Evidence was admitted to show that A. owned the property next below his name, for which B. his tenant was assessed as tenant, and A.'s vote was held good.—*Baker's vote. Ibid.*

17. The widow of an intestate owner continuing to live on the property with her children, who own the estate and work and manage it, should not, till her dower is assigned, be assessed jointly with the joint tenants, nor should any interest of hers be deducted from the whole assessed value. Where, therefore, four joint tenants and such doweress occupied property assessed for \$900, the joint tenants were held entitled to the qualification of voters.—*Gilroy's vote. Ibid.*

18. Where a husband had possession of a lot for which he was assessed as occupant and his wife as owner, but which belonged to the wife's daughters by a former husband, his vote was held good.—*Whaley's vote. Ibid.*

19. Where the owner died intestate, and the husband of one of his daughters leased the property and received the rents, such husband was held not entitled to vote.—*Leslie's vote. Ibid.*

20. Where it was proved that for some time past the owner had given up the whole management of the farm to his son—retaining his right to be supported from the product of the place, the son dealing with the crops as his own, and disposing of them to his own use—the son's vote was held good.—*Caldwell, Moore, and Smith's votes. Ibid.*

21. Where it was proved that an agreement existed (verbal or otherwise) that the son should have a share in the crops as his own, and such agreement was *bona fide* acted on, the son being duly assessed, his vote was held good; the ordinary test being: had the voter an actual existing interest in the crops growing and grown? *Ibid.*

22. But where such crops could not be seized for the son's debt, the son was not entitled to vote.—*Francis' vote. Ibid.*

23. Where the agreement did not show what share in the crops the son was to have with his father, and it appeared to be in the father's discretion to determine the share, such son was not entitled to vote.—*Johnson's vote. Ibid.*

24. Where a father was by a verbal agreement "to have his living off the place," the son being owner and in occupation with the father, the father was not entitled to vote.—*Wiltse's vote. Ibid.*

25. A tenant from year to year cannot create a sub-tenancy nor create a right to vote by giving another a share in the crops raised on the leased property.—*Dunham's vote. Ibid.*

26. Where a man occupied a house as toll collector, and not in any other right, he was not qualified to vote.—*McArthur's vote. Ibid.*

27. The right to vote is not to be taken away or the vote forfeited by the act of the voter unless under a plain and express enactment, for it is a matter in which others besides the voter are interested.—*Brockville, 139.*

28. Where two partners in business occupied premises the freehold of which was vested in one of them, and the assessment of the premises was sufficient to give a qualification to each, both partners were held qualified to vote.—*Fitzgerald's vote. South Grenville, 163.*

29. Where a father, the owner of a lot, told his son that he might have the lot and advised him to get a deed drawn, and the lot had been assessed to the son for 3 or 4 years, and was rented to a tenant by the father with the assent of the son, who paid to the father his wages but the father collected the rent. *Held*, that as there was nothing but a voluntary gift from the father to the son, without possession, the son's vote was bad.—*Lundy's vote. Ibid.*

30. Where a father had made a will of a lot to his son who was assessed for it, and the son took the crops except what was used by the father, who resided on the lot with his wife, the son residing and

working on another farm. *Held*, that the son had not such a beneficial interest in the lot as would entitle him to vote.—*Mullin's vote. Ibid.*

31. Where A., who resided out of the riding, had made a contract in writing to sell to B. the property assessed to him as owner, but had not at the time of the election executed the deed, B. having been in possession of the property for several years under agreements with A. *Held*, that A. was a mere trustee for the purchaser, and had therefore no right to vote.—*Holden's vote. Ibid.*

32. Where a vendor before the revision of the assessment roll had conveyed and given possession of the property to a purchaser, and such purchaser had afterwards given him a license to occupy a small portion of the property, such vendor was held not entitled to vote.—*Noblin's vote. Ibid.*

33. Where the owner of mortgaged property died intestate, leaving a widow and sons and daughters, and the property was sold under the mortgage, and the deed made to the widow, but three of the sons furnished some of the purchase money, and all remained in possession, and the eldest son was assessed as occupant. *Held*, that as the eldest son did not show that the property was purchased for him, and the presumption from the evidence being that it was bought for the mother, such eldest son had no right to vote.—*Morrow's vote. Ibid.*

34. A trustee under a will having no present beneficial interest in the real property assessed to him, was held not entitled to vote.—*Jones' vote. Ibid.*

35. Where a voter was assessed for property which he sold on the 27th February, 1871, before the revision of the Assessment Roll, and was not assessed for other property of which he was in possession as owner or tenant, he was held not entitled to vote.—*Place's vote. Ibid.*

36. The mistake of the number of the lot does not come under the same rule as the mistake of a name, as the latter is provided for in the statute and the voter's oath. *Ibid.*

37. Where one of two joint owners was assessed for property at \$200, he was not entitled to vote. *Ibid.*

38. A voter whose qualification is successfully attacked may show a right to vote on income; but in such case he must prove that he has complied with all the requirements of the Act which are essential to qualify him to vote on income.—*Gray's vote. Lincoln (2), 500.*

39. A voter was assessed in two wards of a town; he parted with his property qualification in one of the wards, but voted in such ward. *Held*, that the vote might be supported on the qualification in the other ward, which, if the voter had voted on it, would have made it necessary for him to vote in another polling division.—*Gibson's vote. Ibid.*

40. A person assessed for land he does not own, though receiving rent for it from a tenant, is not qualified to vote.—*Clark's vote. Ibid.*

41. By the Dominion Elections Act of 1873, the qualification of voters to the House of Commons was regulated by the Ontario Election Acts. *North Victoria, 584.*

42. The respondent was elected by four votes. At the election the names of twelve persons who were entered on the assessment roll as "freeholders" appeared on the voters' lists, owing to a printer's mistake, as "farmers' sons." Their votes were challenged at the poll, and they were required by the petitioner's scrutineers to take the farmers' sons' oath, which they refused. Subsequently they offered again to vote and to take the owner's oath, and the deputy returning officer, who was also clerk of the municipality, knowing them, gave them ballot papers and allowed them to vote. *Held*, (1) That having been rightly entered on the assessment roll, the mistake as to their qualifications on the voters' list did not disfranchise them. (2) That their refusal to take the farmers' sons' oath was not a refusal to take the oath required by law. A refusal to swear is when a voter refuses to take the oath appropriate to his proper description. (3) That having a right to vote, although

they voted in a wrong capacity, their votes could not be struck off. *Prescott*, 780.

See also p. 671.

VOTERS' LISTS. — 1. Special report, and observations on making the revised lists of voters final, except as to matters subsequent to the revision. *Stormont*, 21.

2. The proper list of voters to be used at an election is "the last list of voters made, certified, and delivered to the Clerk of the Peace at least one month before the date of the writ to hold such election." *Monck*, 154.

3. An irregular voters' list had been used in one of the townships in the Electoral Division; but that the result of the election had not been affected thereby, and that the election was not avoided. *Ibid.*

4. *Held*, following the *Monck* case (32 Q. B., 147; ante p. 154), that the list of voters to be used at an election must be the list made, certified and delivered to the Clerk of the Peace at least one month before the date of the writ to hold such election. *Prince Edward* (2), 161.

5. The list of voters used at the election in the Township of Hillier was not filed until the 28th November, 1871, and the writ of election was dated 9th December, 1871. *Held*, that the list of voters of 1871 should not have been used. *Ibid.*

6. *Held*, that the effect of the Voters' Lists Finality Act, 1878, was to render the voters' lists final and conclusive of the right of all persons named therein to vote, except where there had been a subsequent change of position or status by the voter having parted with the interest which he had (or by the assessment roll appeared to have) in the property, and becoming also a non-resident of the electoral division. *South Wentworth*, 531.

7. Mistakes in copying the voters' lists should not deprive legally qualified voters of their votes any more than the names of unqualified voters being on the list would give them a right to vote. But the mere fact that the lists were not correct alphabetical lists, or had not the

correct number of the lot, or were not properly certified, or the omitting to do some act as to which the statute is directory, is no ground for setting aside an election, unless some injustice resulted from the omission, or unless the result of the election was affected by the mistake. *North Victoria*, 584.

8. The Court will not go behind the voters' lists to inquire whether a voters' name was entered upon the assessment roll in a formal manner or not. *North Simcoe*, 612.

9. *Semble*, That the provisions of the law as to how voters are to be entered on the voters' list in respect to their property, and as to the manner in which they are to vote, are directory. *Prescott*, 780.

VOTING BY BALLOT.—One B., a voter who could neither read nor write, came into a polling booth, and in the presence of the deputy returning officer asked for one not present to give him instructions how to mark his ballot. The deputy returning officer gave the voter a ballot paper, who then stated he wished to vote for the respondent. One W., an agent of the respondent, in the polling booth, took the pencil and marked the ballot as the voter wished, and the voter then handed it to the deputy returning officer. No declaration of inability to read or write was made by the voter. *Held*, that no one but the deputy returning officer was authorized to mark a voter's ballot, or to interfere with or question a voter as to his vote; and the deputy returning officer permitting the agent of a candidate to become acquainted with the name of the candidate for whom the voter desired to vote, violated the duty imposed on him to conceal from all persons the mode of voting, and to maintain the secrecy of the proceedings. *Halton*, 283.

See also pp. 500, 519, 531, 671, 725, 780.

WEIGHT OF EVIDENCE.—See pp. 8, 97, 187, 556, 579.

WITNESSES OUT OF COURT.—See p. 243.

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